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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 258. 42.

THE STATE OF ARKANSAS, APPELLANT,

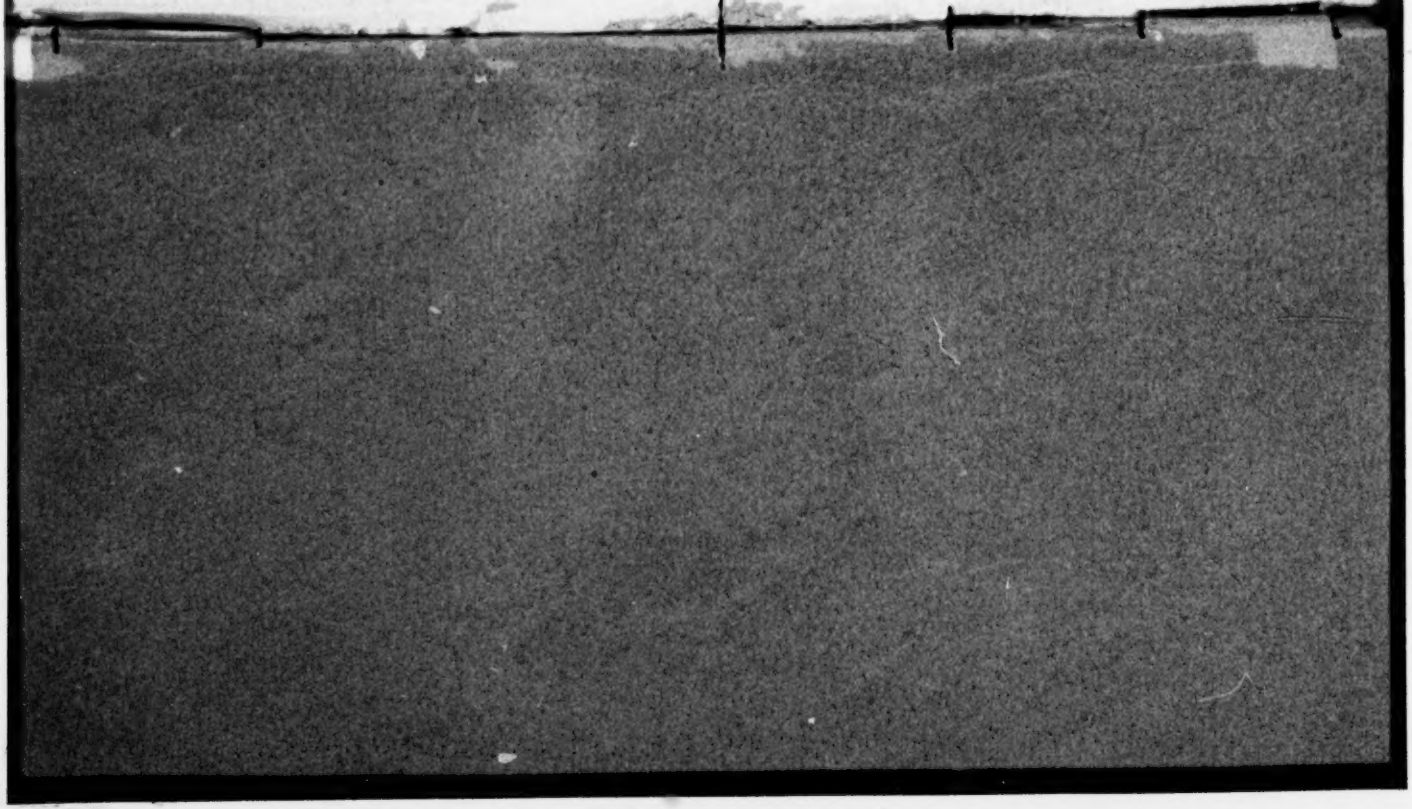
vs.

THE KANSAS AND TEXAS COAL COMPANY AND THE ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

FILED APRIL 16, 1900.

(17,722.)



(17,722.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 252

THE STATE OF ARKANSAS, APPELLANT,

vs.

THE KANSAS AND TEXAS COAL COMPANY AND THE ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 20, 1901.

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a Pleas and proceedings in the United States circuit court for the Fort Smith division of the western district of Arkansas, before the Honorable Jno. H. Rogers, judge of the district court, presiding in the United States circuit court, in the case of The State of Arkansas, plaintiff, *vs.* Kansas & Texas Coal Company & St. Louis & San Francisco Railroad Co., defendants. Complaint in equity. No. 121.

Appearances: Ben. T. Du Val, for plaintiff; Hill & Brizzolara, for Kansas & Texas Coal Co.; B. R. Davidson, for St. Louis & San Francisco Railroad Co.

1 *Transcript of Proceedings from State Court.*

In the Circuit Court of Sebastian County for the Greenwood District.

THE STATE OF ARKANSAS, Plaintiff,
vs.
KANSAS & TEXAS COAL COMPANY and Saint Louis & San Francisco Railroad Company, Defendants. } Complaint in Equity.

1. The plaintiff, The State of Arkansas, on the relation of Jo. Johnson, prosecuting attorney for the 12th judicial circuit, for her cause of action alleges:

2. That defendant Saint Louis and San Francisco Railroad Company is a corporation organized under the laws of the State of Missouri, owning and operating a railroad in the 12th judicial circuit of Arkansas, and more particularly in Sebastian county, of said circuit.

3. That defendants Kansas & Texas Coal Company is a corporation, duly organized under the laws of the State of Missouri, owning and operating a coal mine at Huntington, in the Greenwood district of Sebastian county.

4. That a high state of excitement and condition of hot blood now prevails between striking miners and their sympathizers in large numbers, on the one side, and said coal company and its employees, on the other.

5. That said coal company is threatening and is about to import into said county and town of Huntington, over the line of their co-defendant's railroad, a large number of armed men of the low and lawless type of humanity, to wit, about two hundred, to the great danger of the public peace, moral-, and good health of said county, and more particularly of said town.

6. That said threatened action on the part of said defendant, if permitted to be executed, would become a great public nuisance and would destroy the peace, morals, and good health of said county and town, — would lead to riot, bloodshed, and to the dissemination of contagious and infectious diseases.

2 7. That said county and town of Huntington are now enjoying peace, health, and good order, and your relator be-

lieves that the loss of human life and untold expenses to the taxpayers of said county on account of probable violation of the criminal laws can and should be prevented by the power of the law.

8. Wherefore your relator prays:

1. That the defendant Kansas & Texas Coal Company, its agents, servants, and employees, and each of them, be restrained and prohibited from importing or causing to be imported or brought into Sebastian county or the 12th judicial circuit of Arkansas, and that the Saint Louis and San Francisco Railroad Company, its agents, servants, and employees—each, both, and all of them—be enjoined, restrained, and prohibited from importing, hauling, or bringing, or causing to be imported, hauled, or brought, in the said county or circuit, and from unloading or attempting to unload from any of its cars in said county or circuit any and all large bodies of armed, lawless, or riotous persons or persons affected with contagious or infectious diseases that might endanger the peace, good order, or good health of the State, or create a public nuisance in said county or circuit, under the pains and penalty of the law;

2nd. That a temporary restraining order be issued; and that—

3rd. Upon final hearing said restraining order be made perpetual, and that the State have and recover her costs.

JO. JOHNSON,
Prosecuting Attorney.

Jo. Johnson, being sworn, says that statements of the foregoing complaint are true as he is informed and believes.

JO. JOHNSON.

Subscribed an sworn to before me this April 23, 1899.

STYLES T. ROWE,
Judge 12th Judicial Circuit.

Jo. Johnson, being sworn on behalf of the State of Arkansas, says: That the matters and things complained of herein, with their calamitous consequences, may ensue and the remedy herein sought come too late if he be not permitted to file this complaint or the clerk be not ordered to issue thereon or the sheriff fail to execute the same on this Sunday, April 23, 1899.

JO. JOHNSON.

10. Subscribed and sworn to before me this April 23, 1899.

STYLES T. ROWE,
Circuit Judge.

11. Ordered that the complaint be filed, that the clerk issue proper process, and that the sheriff execute same immediately.

STYLES T. ROWE,
Judge 12th Judicial Circuit.

Filed April 23, 1899.

J. P. DURDEN, *Clerk*,
By R. O. DURDEN, *D. C.*

3 *Summons in Action by Equitable Proceedings.*

The State of Arkansas to the sheriff of Sebastian county, Greeting:

You are commanded to summon Kansas and Texas Coal Company and Saint Louis and San Francisco Railroad Company and deliver to each of them the certified copy of restraining order hereto attached, to answer in 20 days after the service of this summons upon them a complaint in equity filed against them in the Greenwood district of Sebastian circuit court by the State of Arkansas, and warn them that upon their failure to answer the complaint will be taken for confessed; and you will make due return of the summons on the 1st day of the next September term of said court.

[SEAL.] Witness my hand and seal of said court this 23 day of April, 1899.

Original.

J. P. DURDEN, *Clerk*,
By R. O. DURDEN, *D. C.*

(Endorsed:) Original. Summons in action by equitable proceedings. In the circuit court, Sebastian county. State of Arkansas *vs.* Kansas & Texas Coal Company *et al.*

STATE OF ARKANSAS, } ss:
County of Sebastian, }

I have, this 23rd day of April, A. D. 1899, duly served the within by delivering a copy of the same to each of the within-named J. H. Hudnutt, agent, at Jenson, as therein commanded, and Bennett Brown, at Huntington.

Fees.

Service	$1.00
Mileage, 36	3.60
Total	4.60

GEO. T. HARRELL, *Sheriff.*

Returned and filed the 26th day of April, A. D. 1899.
J. P. DURDEN, *Clerk.*

4 At Chambers, April 23, 1899.

STATE OF ARKANSAS, } ss:
Greenwood District, Sebastian County, }

To The Kansas & Texas Coal Company and The St. Louis and San Francisco Railroad Company; the State of Arkansas to the sheriff of Sebastian county, Greeting:

You, the said defendants, are hereby notified and warned that The State of Arkansas, plaintiff, has this day duly obtained an order of injunction in an action, pending in the Sebastian circuit court for

the Greenwood district, wherein said State is plaintiff and The Kansas & Texas Coal Company and The St. Louis & San Francisco Railroad Company are defendants. This is therefore to command you, and you are hereby commanded, together with all your agents, servants, and employees and each of them, — be, and are hereby, restrained and prohibited from importing or causing to be imported or brought into Sebastian county or the 12th judicial circuit of Arkansas, and that The St. Louis & San Francisco Railroad Co., its agents, servants, and employees and each of them, be, and they are hereby, enjoined, restrained, and prohibited from importing, hauling, bringing, or causing to be imported, hauled, or brought into said county or district and from unloading or attempting to unload from any of its cars in said county or district any and all bodies of armed, lawless, or riotous persons or persons affected with contagious or infectious diseases that will or might in any way endanger the peace and good order, morals or health of the State, or create a public nuisance in any locality in said county. This order you will in nowise omit to strictly observe and obey under the penalty of the law. The clerk of this court is ordered to incorporate this order in the summons issued on the filing of the complaint in this cause, and the sheriff of this county is hereby empowered to do and perform all things lawful to be done, to the end that a strict enforcement of this order shall in all things be had and enforced, and to make due return of this writ.

STYLES T. ROWE,
Judge 12th Judicial Circuit.

STATE OF ARKANSAS, }
County of Sebastian. }

I, J. P. Durden, clerk of the circuit court of Sebastian county for the Greenwood district, do hereby certify that the foregoing is a full and complete copy of the original writ herein.

Given under my hand this April 23rd, 1899.

[SEAL.]

J. P. DURDEN, *Clerk*,
By R. O. DURDEN, *D. C.*

5 COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes Geo. Simmons and W. W. McCracken and state that shortly after the car of negroes were brought in by the Kansas and Texas Coal Company during the present strike we were each of us in the engine-room at shaft of mine 53 and saw a negro cleaning or preparing to clean up some repeating rifles, and there was in one stack along the wall about ten of the guns. From what we saw we were led to believe that the Kansas and Texas Coal Co. were arming up their imported negroes. We each of us further state that we know of no arms being carried previous to the importation of negroes by the Kansas and Texas Coal Co.

GEO. SIMMONS.
W. W. McCRACKEN.

Subscribed and sworn to before me the 26th day of April, 1899.
[SEAL.] JNO. C. KENDALL,
Notary Public.

My commission expires Mar. 7, 1900.

6 COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes J. N. Ferguson and states that on last Saturday he was in the camp of negro miners recently imported by the Kansas and Texas Coal Company and saw as much as fifteen guns, with which said negroes had been supplied by said company. Some threats were indulged in, such as *is* calculated to create disturbance. I consider the importation and arming of negroes by said Kansas and Texas Coal Company a menace to the peace of this community and calculated to result seriously if not stopped.

J. N. FERGUSON.

Subscribed and sworn to before me this 26th day of April, 1899.
[SEAL.] JNO. C. KENDALL,
Notary Public.

My commission expires Mar. 7, 1900.

COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Tp. }

Comes W. J. Clifft, justice of the peace of Diamond tp., county and State aforesaid, and states that on or about 11th day of April, 1899, one Pete Osswyr, an employee of the K. T. Coal Company, was tried in his court, and that in his presence A. B. Brown, superintendent of the K. T. Coal Company, told said Pete Osswyr to get him a butcher knofe and carry in his hand or get a pistol, but do not carry under your clothes, or I, "Brown," will get you a cannon if you can carry it on your shoulder.

W. J. CLIFFT, *J. P.*

Subscribed and sworn to before me this 25th day of April, 1899.
[SEAL.] JNO. C. KENDALL,
Notary Public.

My commission expires Mar. 7, 1900.

7 COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Tp. }

Comes A. J. Burk and states that he has interviewed James Brown, constable of Diamond township, also Dan. Hogan, attorney-at-law of Huntington, and they state that they were both present at a certain trial of one Pete Zrossig, a Swede, who is now in employ of the K. and T. Coal Co., and was then on 11th day of April, 1899, being tried for carrying a knife, and that said Dan. Hogan and James Brown say they heard A. B. Brown, superintendent of the K. T. Coal Co., tell said Pete Zrossig that if he wanted to carry arms to carry a Winchester, shotgun, or cannon, if he could get it on his

back, and to shoot the first man that interfered with him. Hogan and Brown say this statement was made in the presence of Esq. J. W. Clifft, Robert Boyd, State mine inspector, and others, but they refused to make affidavit for fear of being accused of taking sides in the strike controversy. I, A. J. Burk, further state that there has been no violence nor damage done to the Kansas & Texas Coal Company's property, nor that of the Prairie Creek Company, and that there is no probability of any serious trouble except the same is caused by the coal company importing negroes or foreign laborers, which will almost certainly result in bloodshed.

A. J. BURK.

Subscribed and sworn to before me this 25th day of April, 1899.

[SEAL.] JNO. C. KENDALL,
Notary Public.

My commission expires May 7, 1900.

COUNTY OF SEBASTIAN, }
States of Arkansas, Diamond Township. }

Comes Sol. Lodge and states that on last Saturday night he saw A. B. Brown, superintendent of the K. T. Coal Company, and the cashier of the same together with two other men, going west in the direction of the camps where the K. T. Coal Co. have the imported negroes, and were carrying guns, and said Sol. Lodge further states that he considers the conduct of said K. T. Coal Company, together with the importation and arming of negroes, a menace to
8 this community; said Sol. Lodge further states that on Friday evening he saw a box of guns on the platform of the depot in Huntington; that on the same evening he saw Red Elea, teamster of the K. T. Coal Co., and some one else take said box of guns and go in the direction of the camps of imported miners with same; that from what he saw he considered that the officers of the K. T. Coal Co. are arming the imported negroes for the purpose of enabling them to commit deeds of violence.

SOL. LODGE.

Subscribed and sworn to before me this 26th day of April, 1899.

[SEAL.] JNO. C. KENDALL,
Notary Public.

My commission expires Mar. 7, 1900.

COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes Wm. Denny, Geo. Simmons, W. W. McCracken, T. F. Martin, Geo. Bunch and states Geo. Numney, recent night watch for the K. and T. Coal Co., since negroes were imported, stated in their presence respectively that he was carrying arms, and that other employees of said K. T. Coal Co. were carrying arms, and further gave

us to understand that the imported negroes and employees of the company were armed and prepared for trouble.

WM. DENNY.
W. W. McCRACKEN.
GEO. SIMMONS.
T. F. MARTIN.
GEO. BUNCH.

Subscribed and sworn to before me this 25th day of April, 1899.
JNO. C. KENDALL.

COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes O. T. Looper, Will McKowen, Jake Richie, and W. F. Williams, and each state respectively that since the car of negroes has been shipped in by the Kansas and Texas Coal Company they have seen employees of the K. T. Coal Co. go toward shaft 53 with arms, and the employees of the K. T. Coal Company have acted in such manner as is calculated to arouse the citizens, and especially the miners, to commit deeds of violence.

O. T. LOOPER.
WILLIE McKOWEN.
JAKE PITCHIE.
W. F. WILLIAMS.

Subscribed and sworn to before me this 25th day of April, 1899.
[SEAL.] ——— ———,
Notary Public.

My commission expires Mar. 7, 1900.

9 COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes Geo. A. Hutchenson and states that on the night of the 24th day of April, 1899, while going home from town about 9 o'clock he was held up by an armed guard of the K. T. Coal Co., who represented that he was an officer. He enquired where I was going; he presented his gun, but did not point it directly at me.

I further state that I know of no striking miners carrying arms.

GEO. A. HUTCHENSON.

Subscribed and sworn to before me this the 25th day of April, 1899.
[SEAL.] JNO. C. KENDALL,
Notary Public.

My commission expires Mar. 7, 1900.

COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes S. J. Jackson and states that on last Saturday he visited the car where the imported miners stay; also that he was out there

yesterday; that on his first trip he saw guns in the car, and that on yesterday he saw armed guards, who had on pistols and told me I had better stop out there; these guards are new men, only recently employed since miners were imported.

S. J. JACKSON.

Subscribed and sworn to before me this 26th day of April, 1899.
[SEAL.] JNO. C KENDALL,
Notary Public.

My commission expires Mar. 7, 1900.

10 COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes J. N. Roberts and states that on last Saturday morning he had started to Geo. Robinson's and was walking up the switch railway and came to a trestle and was going to cross it and was stopped by A. B. Brown, superintendent of the K. T. Coal Company, who told him not to cross. I first thought he was joking, and told him I was going to cross. He told me if I undertook to go by he would kick me off in the creek, so I turned back. This was before any injunction notices were posted. I had been in habit of traveling that way. Mr. Brown told me that union men had no business on that side of the creek. His conduct was very rude and insulting.

J. N. ROBERTS.

Subscribed and sworn to before me this 26th day of April, 1899.
[SEAL.] T. C. MILLER,
Notary Public.

Commission expires Oct. 31st, 1899.

COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes J. K. Davis and states that on last Saturday he and his wife were out fishing and were near the K. T. trestle works that connects shafts No. 45 with 53. Superintendent A. B. Brown, of the K. T. Coal Co., was there. He asked me where I was going and if I was going to cross the creek. I told him I was not, and he told me that I would not be allowed to cross; that the union men had no business on the company's property on the other side of the creek. This was before there was any injunction notices posted. He appeared to talk crabbed and was in an ill humor.

J. K. DAVIS.

Subscribed and sworn to before me this 26th day of April, 1899.
[SEAL.] T. C. MILLER,
Notary Public.

Commission expires Oct. 31st, 1899.

11 COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes John J. Beggs and states that he was present on or about 11th day of April, 1899, at or near the office of A. B. Brown, superintendent of the K. T. Coal Co., and heard the said A. B. Brown tell one Pete Ozsinger not to carry any concealed weapons; that he would furnish him a cannon, if he wanted it, and if any one molested or insulted him to kill them. Brown appeared to be angry. I further state that there was no trouble of any consequence previous to the importation of negroes by K. T. Coal Co.

JOHN J. BEGGS.

Subscribed and sworn to before me this 26th day of April, 1899.

JNO. C. KENDALL,
Notary Public.

My commission expires Mar. 7, 1900.

County clerk or other officers knowing facts, Tailorville, Ill.:

What was expense of your county and loss of life of Pana strike? Answer quick. Sign officially.

JO. JOHNSON,
Prosecuting Attorney.

County clerk or other officers knowing facts, Carlonville, Ill.:

What was expense of your county and loss of life of Virden strike? Answer quick. Sign officially.

JO. JOHNSON,
Prosecuting Attorney.

Governor John R. Tanner, Springfield, Ill.:

What was State expense and loss of life in Pana and Virden strikes? Answer quick.

JO. JOHNSON,
Prosecuting Attorney.

12 STATE OF ARKANSAS, }
County of Sebastian. }

W. C. Hardester, being first sworn, states:

W. C. Hardester; age, 30 years; cashier for Kansas and Texas Coal Co., Huntington, Ark.; says that he was present during a conversation between Bennett Brown and Peter Zrossig, in which said Bennett Brown told Peter Zrossig that the laws of the State of Arkansas forbid a person from carrying concealed weapons, but he had a perfect right to carry a gun, revolver, or a cannon, provided it was not concealed. The said Bennett Brown further told him that he would advise him to do so and shoot the first man that assaulted him, provided it was in self-defense.

W. C. HARDESTER.

Subscribed and sworn to before me this 26th day of April, 1899.

W. H. HILE, *J. P.*

13 Received at 5, Lr. Ax. R'y; 20, collect.

CARLINVILLE, ILLS., *Apr.* 27, 1899.

Joe Johnson, prosecuting attorney, Fort Smith, Ark.:

Loss of life Verden strike sixteen, wounded 27; cost the county and State at least ten thousand dollars.

O. C. HARTLEY,
County Clerk.

8.50 a. m.

Received at 16, Lr. Ax. R'y; 18, paid.

STATE HOUSE,
SPRINGFIELD, ILLS., *Apr.* 29, 1899.

Jo. Johnson, Fort Smith, Ark.:

Lost to State of Pana and Verden strikes, about one hundred thousand dollars; loss of life, 19.

JOHN R. TANNER, *Governor.*

11.05 a. m.

Endorsed on back: Filed 5, 6, 1899. J. P. Durden, clerk, by R. O. Durden, D. C.

14 *Bond for Removal.*

Know all men by these presents that we, Kansas & Texas Coal Company and St. Louis & San Francisco R. R. Co., as principals, and James Brizzolara & Jno. Vaile, as sureties, are held and firmly bound unto the State of Arkansas at relation of Jo. Johnson in the penal sum of one thousand ($1,000) dollars; for the payment whereof, well and truly to be made, unto the said State of Arkansas at relation of Jo. Johnson, its successors, heirs, and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents.

Conditioned, however, that the said Kansas & Texas Coal Co. and the Saint Louis — San Francisco R. R. Co. having petitioned the circuit court of Sebastian county, Greenwood district, Arkansas, for the removal of a certain cause therein pending, wherein The State of Arkansas is plaintiff and Kansas & Texas Coal Co. & St. Louis & San Francisco R. R. Co. are defendants, to the circuit court of the United States in and for the Fort Smith division of the western district of Arkansas:

Now, if the said Kansas & Texas Coal Co. and St. Louis & San Francisco R. R. Co. shall enter in the said circuit court of the United States on the first day of the next session a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then

this obligation to be void; otherwise to remain in full force and virtue.

As witness our hands and seals on this 10th day of July, 1899.

KANSAS & TEXAS COAL CO., [SEAL.]
By JAMES BRIZZOLARA, *Its Att'y.* [SEAL.]
ST. LOUIS & SAN FRANCISCO R. R. CO., [SEAL.]
By JAMES BRIZZOLARA, *Its Att'y.*
JAMES BRIZZOLARA. [SEAL.]
JNO. VAILE.

STATE OF ARKANSAS, }
County of Sebastian, } ss:

I, James Brizzolara, of said Sebastian county, the surety named in the foregoing bond, being duly sworn, say that I am a resident of the State of Arkansas and a property-holder therein; that I am worth the sum of five hundred dollars over and above all my
15 just debts and liabilities and exclusive of property by law exempt from execution; that I have property in the State of Arkansas liable to execution of the value of more than five hundred dollars, and that I know Jno. Vaile is worth in the State of Arkansas, exclusive of exemptions, the sum of five hundred dollars.

Subscribed and sworn to before me this 11th day of July, 1899.

JAMES BRIZZOLARA.

As witness my hand and official seal this 11th day of July, 1899.

[SEAL.] J. P. DURDEN, *Clerk.*

Endorsed on back: Bond for removal. State of Arkansas *vs.* Kansas & Texas Coal Co. *et al.* Filed in open court July 18, 1899. J. P. Durden, clerk.

16 STATE OF ARKANSAS, }
County of Sebastian. }

In the Circuit Court of Sebastian County, Greenwood District.

STATE OF ARKANSAS at the Relation of Jo. Johnson, Plaintiff, *vs.* KANSAS & TEXAS COAL COMPANY & ST. Louis & San Francisco Railroad Company, Defendants.	Petition for Removal to the Federal Court.

To the honorable circuit court of Sebastian county, Greenwood district, State of Arkansas:

Your petitioners respectfully show that they are the defendants in the above-entitled cause; that they are non-residents of the State in which said suit is brought, to wit, the State of Arkansas; that the Kansas & Texas Coal Company is a corporation duly organized and incorporated under the laws of the State of Missouri and a resi-

dent and citizen of the State of Missouri; that the defendant The St. Louis & San Francisco Railroad Co. is a corporation duly organized and incorporated under the laws of the State of Missouri, — a resident and citizen of the State of Missouri.

That Jo. Johnson, the relator herein, is and was at the time of the bringing of the aforesaid suit a resident and citizen of the State of Arkansas and of the western district of Arkansas, Fort Smith division, and that the matter and amount in dispute in the said suit exceeds, exclusive of interest and cost, the sum or value of $2,000.

That the said suit is of a civil nature, being a suit in equity seeking to enjoin defendants from importing or causing to be imported or brought into Sebastian county or the 12th judicial circuit of Arkansas, and that the said defendant railway company, its agents, servants, and employees, each and every one of them, be enjoined, restrained, and prohibited from importing, hauling, or bringing from or causing to be imported *all* or brought into the said county
of Sebastian or circuit, and from unloading or attempting to
17 unload from any of its cars in said county of Sebastian or circuit any and all large bodies of armed, lawless, or riotous person or persons infected with contagious or infectious diseases that might endanger the peace, good order, and good health of the State or create a public nuisance in said county or circuit.

That the controversy in the said suit is wholly between citizens of different States, to wit, between your said petitioners, who aver that they were at the time of bringing of this suit and still are citizens of the State of Missouri, and the said plaintiff, who, as your petitioner avers, was then and still is a citizen of the State of Arkansas.

That said suit is one arising under the Constitution and laws of the United States, in this, to wit, that petitioner The Kansas & Texas Coal Company is engaged in the business of mining coal in the State of Arkansas and transporting and selling the same therefrom, as a business, in the State of Texas, Kansas, and Missouri, and is thereby engaged in interstate commerce.

That petitioner St. Louis & San Francisco R. R. Co. is a common carrier and engaged in carrying passengers and freight through and from the States of Arkansas, Texas, Missouri, Kansas, and the Indian Territory and Oklahoma Territory, and thereby engaged in interstate commerce.

That petitioners are instruments of interstate commerce, and that for the purpose of such commerce and under the interstate commerce clause, of the Constitution of the United States and the laws passed in pursuance thereof they have the power and right each to conduct its said respective business, and to operate said mines and transport and sell coal and transport passengers and freight free and untrammeled from any restraints and conditions sought to be imposed upon them in this action.

That this action was brought to restrain and enjoin the defendant Kansas & Texas Coal Company from working its mines in the State of Arkansas, and the St. Louis & San Francisco R. R. Co. from acting as a common carrier and transporting passengers and freight, and the said action is an attempt on the part of plaintiff to interfere

with and restrain petitioners from carrying on their business aforesaid, and said action is in restraint of and an abridgement
18 upon the rights and immunities under the interstate commerce laws of the United States and in violation thereof, and that said action creates a substantial and serious burden upon interstate commerce.

That said suit is one arising under the Constitution and laws of the United States, and that petitioners have a defense thereto arising under the laws of the United States, and that therefore, although the State of Arkansas is a party thereto as plaintiff at the relation of Jo. Johnson, that under the laws of the United States the same, for the reason aforesaid, is removable to the circuit court of the United States for the western district of Arkansas, Fort Smith division.

Your petitioners herewith present a good and sufficient bond, as provided by the statute in such cases, that they will, on or before the 1st day of the next ensuing session of the United States circuit court for the western district of Arkansas, Ft. Smith division, file therein a transcript of the record of this action, and for the payment of all costs which may be awarded by the said court if the said circuit court shall hold that this suit is wrongfully or improperly removed thereto.

Your petitioners therefore pray that this court proceed no further herein except to make the order of removal as required by law, and to accept the bond presented herewith and direct a transcript of the record herein to be made for said court, as provided by law; and, as in duty bound, your petitioners will ever pray.

KANSAS & TEXAS COAL CO.,
ST. LOUIS & SAN FRANCISCO R. R. CO.,
By their attorneys, B. R. DAVIDSON & HILL & BRIZZOLARA.

STATE OF ARKANSAS, }
County of Sebastian. }

James Brizzolara, being first duly sworn, on oath says that he is one of the attorneys of the defendants in the above-entitled cause and of the petitioners named in the foregoing petition; that he has read the same and verily believed it to be true.

JAMES BRIZZOLARA.

Sworn to and subscribed before me this 10th day of July, 1899.
J. P. DURDEN, *Clerk.*

Filed in open court this Jul- 18, 1899.
J. P. DURDEN, *Clerk.*

Commission expires Feb. 5, 1901.

19 STATE OF ARKANSAS at the Relation of Jo. JOHNSON, Plaintiff,
vs.
KANSAS & TEXAS COAL CO. ET AL.

Record Entry.

Now, on this day, comes the defendants, The Kansas & Texas Coal Co. & The St. Louis & San Francisco Railroad Company, and present their petition & bond for removal of the aforesaid cause to the circuit court of the United States for the western district of Arkansas, Fort Smith division, which petition & bond aforesaid had heretofore — presented to this court, & in open court file the same.

1st. The court finds from the whole record that the suit is in the name of and for the State of Arkansas, and that it is the State of Arkansas against the defendants.

2nd. That the court finds from the whole record that no amount of money is involved in this suit; neither $2,000 or any other sum.

3rd. That the court finds from the whole record and the decision of the Supreme Court of the United States that there is no question arising in this suit under the Constitution and laws of the United States, which has not heretofore been decided, touching the police powers of the States, and hence — no longer a Federal question.

The court declares the law to be, in the language of the Supreme Court of the United States, that "a State court is not bound to surrender its jurisdiction of a suit or petition for removal until a case has been made which on its face shows that the petitioner has a right to the transfer; and if it decides against its removal and proceeds with the case, its ruling — reversable here (in the Supreme Court of the United States) after final judgment." That a suit between a State on the one side and citizens on the other cannot be removed on the ground of citizenship. Stone *v.* South Carolina, United States Reports, vol. 117, page 430; decided April 5, 1886.

Against an action brought under the laws — N. Y., 1875 c. 604, as amended by laws — 1885, in the name of the "shore inspector" to recover the penalty imposed by that act for depositing prohib-
20 ited materials in the waters of the bay and harbor of New York, which penalty, when recovered, goes into the State treasury, is in effect an action by the State, and therefore not removable on the ground of citizenship, under act Cong. March 3, 1887. Ferguson, shore inspector, *v.* Ross *et al.* (two cases).

(Circuit court E. D. New York, March 20, 1889) 38 Fed. Rep., 161.

Again, "a suit instituted by a State in one of its own courts against a citizen of another State is not removable on the ground of a diversity of citizenship of the parties."

State of Alabama *v.* Walffe, 18 Fed. Rep., 836.

On the question of the amount involved the law is that before a cause can be removed on this ground it must appear that the amount in controversy is not less than two hundred dollars. There is no amount whatever in this cause.

There are no questions arising under the laws of the United States

in this case which have not heretofore been settled by the Supreme Court of the United States. Section 8, Con. U. S. This clause of the Constitution does not, nor does any other, prohibit the States from passing laws to regulate and control professions, pursuits, trades, and business that fall within the definition "of the police power," such as inspection law-, quarantine laws, health laws of every description, as well as laws regulating the internal commerce of a State and those which respect turnpike roads, ferries, etc. Gibbons *v.* Ogden, 9 Wh., 203.

The "police power" is the power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable law, statutes, and ordinances, either with or without penalties, not repugnant to the constitution, as they shall judge to be for the good and welfare of the Commonwealth and of the subjects of the same. Commonwealth *v.* Alger, 7 Cush., 85 (1851), Slow, C. J.; Commonwealth *v.* Bears, 132 Mas., 546 (1882). It is the power by which the health, good order, peace, and general welfare of the community are promoted. Webber *v.* Virginia, 103 U. S., 348 (1880), Field, J.

21 The States have full power to regulate within their limits matters of internal police, including in that general designation whatever will promote the peace, comfort, convenience, and prosperity of their people.

Esconaba & Lake Michigan Transportation Co. *v.* City of Chicago, 107 U. S., 683 (1882), Field, J. Again, the power is in each State to prescribe regulations to promote the health, peace, morals, education, and good order of the people.

Barbier *v.* Connalley, 113 U. S., 31 (1885), Field, J.; Soon Hing *v.* Craulr, Jb., 703 (1885). None of the amendments to the Constitution of the United States interfere with this power. Munn *v.* Illinois, 94 U. S., 145 (1876), Field, J., Jb., 113.

Legislation which secures to all protection in their rights and the equal use and enjoyment of their property embraces an almost infinite variety of subjects. Whatever affects the peace, good order, morals, and health of the community comes within its scope, and every one must use his property subject to restriction which such legislation imposes; the police power of the State commonly interferes with the conduct of individuals in their intercourse with each other and in the use of their property, so far as may be required to secure these objects. Munn *v.* Illinois, 94 U. S., 145 (1876), Filed, J., Jb., 113. The power certainly extends to the protection of the lives, health, and property of the citizens and to the preservation of good order and the public morals.

The legislator cannot divest itself of the power to provide for these objects. They belong to that class of objects which demand the application of the maxim *solus populi superema lix*, and they are to be attained and provided for by such appropriate means as the legislature's discretion may devise. This discretion can no more be bargained *any* than the power itself. Beer Co. *v.* Massachusetts, 97 U. S., 22 (1877), Bradley, J.; Fertilizing Co. *v.* Hyde Park, Jb., 699

(1877); Justice *v.* Commonwealth, 81 Va., 212 (1885), cases; State *v.* Yopp, 97 N. C., 478, 479 in (1887).

22 The Government may, by general regulations, interdict such uses of property as would create nuisances and become dangerous to the lives, health, peace, or comfort of the citizens. Unwholesome trades, slaughter-houses, operation- offensive to the senses, the deposit of power, the application of steam power to propel cars, building with combustible materials, and the burial of the dead may be interdicted on the general and rational principle that every person ought to use his property as not to injure his neighbors, and that private interests must be made subservient to the general interests of the community. 2 Kent, 304; Mann *v.* Illinois, U. S., 146 (1876), cases.

A law passed in the legitimate exercise of this power is not obnoxious, because it does not provide compensation for inconveniences to the individual; he is rewarded by the common benefit secured. Bancroft *v.* Combridge, 126 Mass., 441 (1879), cases.

The power was not surrendered to the United States, but remains complete, unqualified, exclusive in the State. If one were to attempt to define a subject so diversified and multifarious, we would say that every law came within this description which concerns the welfare of the whole people of the State or of any individual within it, whether it related to their rights or their duties, whether it respected them as men or as citizens of the State and whether their public or private relations, whether it related to the rights of persons or of property or of the whole people of a State or of any individual within it, and whose operations were within the territorial limits of the State and upon the person- and things within its jurisdiction. State of New York *vs.* Milles, 1 Pet., 139 (1837),

Barbon, J. Within its category comes every law for the restraint and punishment of crime, health, and morals. License cases, 5 Howe, 631 (1847), Greer, J. It was not the design of the Constitution of the United States or of any of the amendments thereto to interfere with the power of the State to protect the lives, liberty, and property of its citizens or with the exercise of the power in the adjudica-

23 tion of the courts of the State in administering the process provided by the laws of the State.

Ex parte v. Converse, 137 U. S., 624; *Re* Kemmler, 136 U. S., 436. The petition for removal is denied. To which action of the court, defendants except.

Clerk's Certificate to Transcript.

(10-cent revenue stamps.)

STATE OF ARKANSAS, }
County of Sebastian, } *ss:*

I, J. P. Durden, clerk of the circuit court within and for the county and State aforesaid, do hereby certify that the annexed and foregoing pages contain a true and perfect transcript of the complaint and all other papers filed, also record entries, in the case

of The State of Arkansas *vs.* Kansas & Texas Coal Co. *et al.*, as therein set forth, Sebastian county, Arkansas.

Witness my hand and official seal this 24th day of July, 1899.

(Signed) J. P. DURDEN, *Clerk*,
By R. O. DURDEN, *D. C.*

(Endorsed on back:) Filed in my office this July 25, 1899. Thomas Boles, clerk.

24 *Notice.*

In the United States Circuit Court for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS at the Relation of Jo. JOHNSON, Plaintiff,
vs.
KANSAS & TEXAS COAL COMPANY and ST. LOUIS & SAN FRANCISCO Railroad Company, Defendants.

To Jo. Johnson, the relator in the above-styled cause and prosecuting attorney of the 12th judicial circuit:

You are hereby notified that the defendants herein have filed in the United States circuit court for the western district of Arkansas, Fort Smith division thereof, certified transcript of the record and all the pleadings and papers in the above-entitled cause, and that such case is now properly pending in said United States circuit court.

And you are hereby further notified that on Monday, the 31st day of July, 1899, at 10 o'clock a. m., or as soon thereafter as the court will hear the same, the defendants will move for a dissolution of the injunction heretofore granted herein and will at the same time and place move the court for an injunction against you, your agents, attorneys, or representatives prosecuting said action any further in the Sebastian circuit court for the Greenwood district, as the same has been properly removed to the said United States court.

Given under our hands this 25th day of July, A. D. 1899.

HILL & BRIZZOLARA,
Att'ys for D'f'ts.

I waive service of further notice in above matter, but hereby beg to suggest to the court that on Monday, July 31, I may be held by the circuit court at Greenwood, and that I will be held in circuit court at Waldron on first Monday and probably second Monday in September, but could appear in within-mentioned matter on September 3rd, Monday.

JO. JOHNSON, *Pros. Att'y.*

25 July, 1899.

(Endorsed on back:) Filed July 28th. Thomas Boles, clerk of the court.

25 STATE OF ARKANSAS, }
County of Sebastian. }

In the Circuit Court of Sebastian County for the Fort Smith District.

STATE OF ARKANSAS *ex Rel.* JO. JOHNSON, Prosecuting Attorney, }
vs. }
KANSAS & TEXAS COAL COMPANY and ST. LOUIS & SAN FRANCISCO Railroad Company. }

Transcript of the Testimony of Bennett Brown.

Before his honor Styles T. Rowe.

Appearances: For the State, Jo. Johnson, prosecuting attorney; John S. Little, Edgar E. Bryant, and Ben. T. Du Val. For the K. & T. Coal Co., Messrs. Hill & Brizzolara. For the St. L. & S. F. R. R. Co., B. R. Davidson.

April 27, 1899.

26 BENNETT BROWN, having been duly sworn upon behalf of the Kansas & Texas Coal Company, was examined in chief by Mr. Joseph M. Hill, and testified as follows, to wit:

Question. What is your position with the Kansas & Texas Coal Co.?

Answer. Local superintendent of the company at Huntington.

Q. How long have you occupied that position?

A. Two years.

Q. When did you commence?

A. The last day of February.

Q. How many men did you have working in the mines at Huntington at that time?

A. About four hundred, as near as I can judge now.

Q. What is the full capacity of your mines? How many men will you work if you are running pretty fully?

A. About 500 men at that time.

Q. The strike has been on, then, since the first of March?

A. Yes, sir.

Q. How many men have continued to work for you since that time?

A. We have had in the mines at various times since the first of March about 50 men.

Q. At any one time?

A. No, sir; not at any one time. We have never had more than 17 or 18 men at any one time.

Q. That has been as many as you could keep at any one time in the mines?

A. Yes, sir.

Q. Has your company been ready since the first of March to permit those miners that have quit you to go back to work?

A. Yes, sir; at all times.

27 Q. They have refused, or, rather, failed to do so?
A. Failed to do so.
Q. Have you attempted to get miners from other places to take their places?
A. We have.
Q. How many of those miners that were working for you the first of March, or, rather, the last of February, are there in Huntington now or that immediate vicinity?
A. Not more than 200.
Q. What has become of the other two hundred?
A. I do not know what has become of them.
Q. They have all left those parts, have they?
A. Yes, sir.
Q. There is not, then, over two hundred miners there, you think?
A. Not that were in our employment previous to the strike.
Q. Then it would become necessary in any event for you to increase your force two or three hundred any way you take it, would it not, even if they all went back to work?
A. Yes; that are there now; yes, sir.
Q. If the other mines around there were running, could you get miners for yourself without importing them?
A. Not unless they come in freely, voluntarily, and of their own accord.
Q. From other places, you mean?
A. Yes, sir.
Q. If the other mines down in Sebastian county were running it would be necessary to import labor or labor to voluntarily come in from a distance?
A. Yes, sir.
Q. At least two or three hundred?
A. Yes, sir; at least two or three hundred at Huntington.
Q. The strike is on at other mines in the county under a similar conditions to yours, I believe?
A. I understand so.
Q. What efforts have you made to get any other miners and have you gotten any other miners?
28 A. The president of the company, I understand, employed an agent to go into other fields and engage miners to go to Huntington and work, and some of those engaged have come to Huntington and are at work.
Q. When did they come?
A. I think Thursday of last week.
Q. How many were there?
A. There were sixteen.
Q. How many were white and how many were black?
A. There was one white man.
Q. The balance negroes?
A. Yes, sir.
Q. Those were *bona fide* miners, were they?
A. So far as I know; yes, sir.
Q. They are at work in the mines now?

A. They are.

Q. Did they come voluntarily?

A. There was no coercion used on the part of the company that I know of to force them in.

Q. Was the situation explained to them before they got to Huntington?

A. Yes, sir; fully.

Q. I believe you also permitted a committee from the union to interview them when they got there, did you not?

A. Yes, sir.

Q. Did they explain the situation to them?

A. I asked them if they had made a statement to these men, and they said yes. I asked them if they had said all they wanted to say, and they said they had.

Q. And the men went on to work?

A. Yes, sir.

Q. Were the men armed?

A. No, sir; not that I know of. I never saw any arms, and have no reason to believe they had any arms.

29 Q. Were there any guards with them?

A. Not one.

Q. Did the company purpose to bring in other miners under similar conditions to what they brought in those?

A. I understand they did.

Q. Do you know whether they purposed to bring them in armed?

A. No, sir; they did not.

Q. Or under guard?

A. No, sir.

Q. You had no information to that effect?

A. No, sir.

Q. You are in a position that you would know the plans of the company if such were the plans, would you not?

A. I should think so.

Q. Is it the purpose of the company to bring in *bona fide* miners to work in their mines, or is it the purpose of the company to bring in a large number of armed men of the low land lawless type of humanity?

A. Oh, undoubtedly miners to mine coal: that is what they want.

Q. Is it the purpose of the company to bring men in there infected with contagious and infectious diseases?

A. I have too much respect for my own health to stay there if they did.

Q. A man has to be pretty able-bodied man to be a miner, does he not?

A. He has to be a reasonable able-bodied man and in health to mine coal successfully.

Q. If contagious or infectious diseases would get into the mine it would be very ruinous to the prosperity of the mine, would it not?

A. That would depend entirely upon the character of the disease they possess.

Q. Break up the work in the mine, would it not?
A. Break up the organization altogether.
Q. What has been the condition of those that have been brought in—those 16 or 17?
A. Healthy.
Q. Able-bodied miners?
30 A. Yes, sir.
Q. I believe I asked you if they were armed, and you said they were not, so far as you knew?
A. Yes, sir.
Q. Is it the purpose of the Kansas & Texas Coal Co. to do anything other than to bring in men to work in their mines, taking the place of the men who refuse to work there?
A. Not to my knowledge.
Q. It is making an effort to bring in men to work its mines, as I understand?
A. Unquestionably so.
Q. Anxious to do so?
A. Yes, sir.
Q. The mines have been practically shut down since the strike commenced?
A. Practically shut down since the strike commenced.
Q. Even if all these strikers would go back to work, you would still have to bring in two or three hundred men from a distance?
A. Unless men came in there freely and voluntarily, of their own accord, we would have to.
Q. They would have to come in there from other places?
A. Yes, sir; from other States, in fact.
Q. Is there anything in the charge here—you have heard the sheriff say he had heard rumored that there were to be Pinkerton men in charge of these men. Was there anything in that?
A. I never heard of one being employed by the Kansas & Texas Coal Company to do guarding out there, or duty of any kind.
Q. These men were not coming under guard, as I understand it?
A. No, sir.
Q. They were not a mob that was going down there at all?
A. No, sir.
31 Q. Is it usual to have negroes employed in the mines of the Kansas & Texas Coal Company?
A. Yes, sir.
Q. Do they have them, as a rule, there?
A. Yes, sir; we have had colored miners in Huntington ever since I went there.
Q. A good many of these strikers are colored miners, are they not?
A. Yes, sir.
Q. Is the objection, so far as you are able to learn, to the importation of labor or is it particularly aimed to the importation of negro labor?
A. Well, it might be intensified, so far as negro labor is concerned, but still the feeling would be materially the same against

the importation of any kind of labor, white or colored, for that purpose.

Q. So far as you know, has there been any acts of lawlessness or threatened lawlessness on the part of any of these men who have continued to work for the Kansas & Texas Coal Company since the strike began?

A. Not to my personal knowledge.

Q. Have any complaints been made to you that these men—I believe you say altogether you have had about fifty at work there?

A. Yes, sir.

Q. That any of them were threatening any outbreak or threatening to attack anybody or threatening any violation of the laws at all?

A. The men there at work?

Q. Yes.

A. No, sir.

Q. There have been some threats made down there, I believe, too, but I want to know if there have been any of them, so far as you know, on the side of the laborers and the officials of the Kansas & Texas Coal Company?

A. No, sir.

Q. Could you make an approximation of the value of the plants at Huntington owned by the company—the K. & T. Company?

32 A. Not accurately.

Q. Just make a rough estimate, as near as you can, from your knowledge of the situation.

A. I should say $400,000.

Q. What is the extent of the damage, approximately, if you can state, to the company in suspending the operation of its mines, per day—what is the loss to the company, in other words?

A. That I am unable to say.

Q. Would it run up into the thousands of dollars?

A. It might, and it might not, run it to a single cent.

Mr. EDGAR E. BRYANT (of counsel for the State): It might be a profit to stop sometimes?

The WITNESS: Yes; undoubtedly it would be.

Mr. JOHN S. LITTLE (of counsel for State): The miners are helping you?

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): We will speak ordinarily. What would be the loss to the company in the situation from the first of March to the present time in the stoppage, if you can make an estimate?

A. That is incalculable. The fact of the matter is that a company, like the Kansas & Texas Coal Company, doing a large business not only lose its trade at the time it is stopped, but it loses its trade for some time after it has started to work. It is not only the immediate loss it sustains, but it is the consequential loss of not being able to fulfill its contracts by the consequences of these stoppages.

Q. The loss, then, would be quite large and quite serious?

A. I think so; yes, sir.

Q. I wish you would state to the court, in your own language, just the situation down there on last Saturday and Sunday, as you understood it.

A. The situation, as I understand it, was of perfect quietness.

Q. Was there any threatened outbreak?

A. Not to my knowledge; no, sir.

Q. Any riot and bloodshed imminent there?

A. If there was, I did not hear of it.

33 Q. You were there?

A. Yes, sir; I was there.

Q. Now, what was the condition of things when you made application to the sheriff to appoint deputies to protect the property?

A. Numerous complaints were being made to me by the men who were at work and men who had been at work that they would not work nor could not continued to work unless they had proper protection.

Q. Protection from whom?

A. Protection from the company, they said.

Q. You mean protection in their work. I mean who were these threats from?

A. They said from the miners who were on a strike.

Q. To try to prevent them from working—was that the object of it?

A. Yes, sir.

Q. What was the nature of the threats that were reported to you?

A. The character of the threats were such that they would get into trouble; they would be hurt; their houses would be blown up; that they might get hurt; that their houses would be blown up, and a general understanding was conveyed to them that they would not be safe either to go to work or to continue at work if they wanted to work; that their person would not be safe from violence and abuse.

Q. Quite a number of them quit on that account, did they not?

A. Yes, sir.

Q. When that situation developed, what did you do with regard to seeing the sheriff?

A. I told the sheriff the condition of affairs and asked him to deputize men to see that these men were protected in their right to work.

Q. Did he do so?

A. He did not.

Mr. JAMES BRIZZOLARA (of counsel for K. & T. Coal Co.): What did he say?

The WITNESS: He said he had no authority under the law to do such, and, then, he had no money to pay them, even if he had authority under the law.

34 Mr. JOS. M. HILL (of counsel for K. & T. Coal Co.): Did you offer to pay the expenses?

A. I did; yes, sir.

Q. And he still declined to appoint them?

A. He did.

Q. Did he indicate to you that if he appointed deputies there might be a row raised or a riot or anything of that kind, or that it would precipitate a riot?

A. If he made any such remark to me, I do not now remember it.

Mr. JAMES BRIZZOLARA (of counsel for K. & T. Coal Co.): Did he say to you that if he appointed deputies and the parties sent the deputies out there that they might think they were taking sides, and that there might likely have been a collision, owing to that fact?

The WITNESS: If he did so, I can't remember it.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): At any rate, the deputies were not appointed?

A. The deputies were not appointed.

Q. Mr. Herrell testified that he was about to appoint some deputies at one time and concluded not to. Did he ever notify you he was going to appoint some?

A. Yes; he told me he would.

Q. And then afterwards did not, or told you he changed his mind?

A. Afterwards told me he had changed his mind.

Q. After you had applied to the sheriff the next step, I believe, you took was an application to the Federal court for an injunction to restrain interference with the property?

A. Yes, sir.

Q. That was served Sunday, was it not?

A. The notice was served by the United States deputy marshals on Sunday—that is, the notices were posted.

Q. Posted all over the community there and served on the people personally, I suppose, later?

A. Yes, sir.

35 Q. After the service of that injunction, was everything quiet and peaceable down there, so far as you were able to observe?

A. Yes, sir.

Q. The company was purposing to go ahead and bring in those miners under the protection of the injunction?

A. I understand so.

Q. Did you hear of the message of the governor being brought to Huntington, as well as being served at Jenson, on the agent of the company there?

A. I did so.

Q. Were you notified to that same effect as to this notice here or similar?

A. Yes, sir.

Q. Who notified you of that?

A. Mr. Blanton.

Q. Deputy sheriff?

A. Yes, sir.

Q. What did he state to you?

A. He said that the colored miners would not be permitted to come into Huntington.

Q. By what authority did he say that was being done?

A. By command of the governor of the State.

Q. Did he say he was there to enforce that?

A. He was; yes, sir.

Q. When did he give you that notification?

A. About twenty or twenty-five minutes past four o'clock in the afternoon on Sunday.

Q. Did you know of any apprehensions on the part of any one in that community of any violence being done on the part of the employees of the company who were working in their mines or who were to be brought there to work in the mines?

A. I knew of none; no, sir.

Q. The entire apprehension that existed of this trouble was that it would be brought about by the striking miners, was it not?

A. Yes, sir.

36 Cross-examination.

By Mr. JOHN S. LITTLE:

Q. You said a moment ago that a number of miners had been shipped in. Where were they from?

A. They told me they were from Des Moines, Iowa.

Q. How many of them did you say came in?

A. Sixteen.

Q. They came in a body?

A. Yes, sir; came together.

Q. Nobody with them except the miners?

A. Yes, sir; the agent that secured them was with them.

Q. They came with the agent?

A. Yes, sir.

Q. They were not interrupted when they got off?

A. Not in any way, shape, or form.

Q. By any violence?

A. No, sir.

Q. Where did they take up their abode when they came?

A. At the mine.

Q. You put them at the mine?

A. Yes, sir.

Q. Built a stockade out there?

A. We put up a wire fence. You may call that a stockade, if you please.

Q. That is a great Cuba blockade. What character of wire fence?

A. Four or five wire fence, just as you would put around a field.

Q. Have you any arms out there about the mines?

A. We have.

Q. How many?

A. Well, I suppose, as near as I can guess—I don't know exactly, but as near as I can guess—we have about six Winchester guns and four shotguns, or five, and five or six revolvers.

Q. They are kept in that stockade or wire fence, as you please to call it?

A. Kept in that stockade, inside of the fence; yes, sir.

Q. Have you made or are you making arrangements for any additional arms?

37 A. Not unless it becomes necessary.

Q. I say have you up to this time made any efforts to secure additional arms?

A. We have.

Q. What success have you had?

A. In securing additional arms?

Q. Yes.

A. We can secure all we want.

Q. You have arrangements made for that. How long would it take you to get them, or have you got them now?

A. We can get them from Kansas City in 24 hours after we send in the order.

Q. You have the arrangement- ready to meet the order when it is necessary?

A. Not any arrangements made at al-.

Q. I will ask you if you have not an order out now for some guns.

A. We have none that I know of; no, sir.

Q. You don't know, then, that you are expecting a moderate supply in this evening?

A. There has been none ordered by me, and I know of no such order outstabnding.

Q. The men you have got there now at work are armed, are they not?

A. They are not.

Q. Where are the guns? You told me they were in the stockade. Who has got the guns?

A. We have.

Q. You have got the men, too, it seems—the miners?

A. Yes, sir.

Q. Who stays in the wire fence except the miners; do you?

A. I have been there myself; yes, sir.

Q. I supposed you had at some time. Do you live in the stockade?

A. No, I don't.

Q. Who does except the miners? You say the guns and pistols are in there?

A. We have no men that lives permanently in there except the miners.

Q. Are not the guns in there for the use of the miners?

A. Not for the use of the miners, but for the use of persons whom we employ to guard the mines at night; to see that they are not attacked; to see that they are kept in perfect security.

38 Q. How many men do you employ of a night?

A. Four men.

Q. You give them these Winchesters—six of them—and four shotguns and twelve or fifteen six-shooters—these four men?

A. No, sir; we don't.
Q. How do they handle all those guns?
A. I took one myself one night.
Q. You were one of the four that night?
A. No, sir; not one of the four, but one of a dozen.
Q. Was that the "peaceful night," on Sunday night?
A. That wasn't the "peaceful" night on Sunday. It was the "peaceful" night on Thursday, Friday, and Saturday.
Q. It got absolutely peaceful Sunday?
A. It was peaceful all the time.
Q. What did you want with the guns, then?
A. To keep it peaceful (laughter).
Q. By shooting the fellow that got in the way, I suppose. How long had it been before that that you applied to the sheriff for guards—before this Sunday, when it was perfectly peaceful?
A. It was the beginning of that week; just the beginning of that same week.
Q. It was prior to Sunday, was it not?
A. Yes, sir.
Q. What I want to know, if you needed guards before and needed six-shooters and shotguns, and even went out yourself to stand sentinel—if it was so troublesome Thursday, Friday, and Saturday, how did it get so peaceful Sunday?
A. I didn't say it was troublesome Thursday, Friday, or Saturday, did I?
Q. It seemed you looked for trouble. You went out there and stood all night yourself one night?
A. I told you that men told me that they would not work for me unless that I would give them a guarantee that they would work in perfect safety.
39 Q. Yes; you told me that.
A. Yes, sir.
Q. And you told the gentleman on the other side, too, did you not, that you had heard all sorts of threats about dynamiting their houses and dynamiting them, and all that sort of thing?
A. Yes, sir.
Q. Is that the perfect peace you speak of on Sunday?
A. That is the perfect peace I speak about, so far as open knowledge is concerned—so far as open action is concerned.
Q. Where had you made arrangements to get these other importations you were expecting? Were you not expecting some here on Saturday, Sunday, or Monday?
A. We were expecting some in on Monday.
Q. How many?
A. Thirty.
Q. Where from?
A. From Kentucky.
Q. Do you know what point?
A. No; I don't know what point.
Q. How were they coming?
A. They were coming in the cars.

Q. Coming in by themselves; without arms?
A. Accompanied by the agent who contracted with them.
Q. Accompanied by the single agent, you think?
A. Yes, sir.
Q. You have no knowledge whether they came prepared for their defense or not?
A. I know nothing at all about that.
Q. Can you cite me to an instance of any of these conflicts in the country, wherever a car-load of miners went into a town on a strike—where they were expecting a conflict and bloodshed—they would go in there without arms or without guards? Was that the case at Virden or Pana, or anywhere else?
A. So far as newspaper reports were concerned, it wasn't the case, but I do not know of my own knowledge whether it was the case or not.
40 Q. I think we can probably accept that as history. It was the fact. I never heard it disputed. Do you undertake to say now that these miners were unarmed, without guards, without any protection, would run their heads out here in the fire with no means of defending themselves? Is that your idea about it—that they would come in without arms or anything?
A. I say they did. What they have done they certainly can do.
Q. You got sixteen?
A. Thirty is only twice that many.
Q. Did you have a car-load? Did they occupy a single car?
A. I don't know.
Q. Where are they now?
A. They were diverted by the company elsewhere.
Q. Do you mean put to work at other places?
A. Yes, sir.
Q. Have you any additional arrangements for shipping in others into these mines here?
A. None at present, that I know of.
Q. I do not care to go too deep into the intentions of your company, but is it not a fact that you warned your company that their very conduct would create trouble and bloodshed out here—that the shipping in of negroes into the mines out here would create bloodshed and trouble, and didn't you recommend that the company not do it?
A. Have I to answer that question?

Mr. Jos. M. Hill (of counsel for K. & T. Coal Co.): If the court please, I would have been glad for him to have answered it if the prosecuting attorney would have given his information this morning. I think it is exactly the same class of testimony that we sought. If the court had permitted us to have gone into the question of information derived from others, probably governing the actions in the matter, I would not have objected to this question and would have thought that Mr. Brown ought to have answered, but, under the rules of the court, I submit that it is immaterial.

41 The COURT: I think there is a big difference in it. The prosecuting attorney was not on the ground, and he is not the manager of the company, and here is Mr. Brown, that was on the ground and managing the company's affairs. He knows the situation.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): He is manager of the local affairs.

The COURT: I think he will have to answer that question.

Mr. B. R. DAVIDSON (for St. L. & S. F. R. R. Co.): There is one other objection I would like to make. Is there no difference between a man protecting his property and a man threatening violence on that man for protecting his property? If a man is placed in the position that this gentleman is here, the superintendent of valuable property, as the proof shows here, being of the value of four hundred thousand dollars, and men seeking to create a disturbance; and for what? Simply because he wants to hire somebody else. Are the secret communications between the agent and the employer to be gone into by a court here? They are not admissable according to any of the rules of evidence. He was there in charge of the company. The communications between him and his employer were privileged communications. He was acting in a lawful manner; simply giving his opinion, that they are attempting to go into now, as to what the effect of doing this in a lawful manner would be upon the minds of men that are violating the law. It is not admissable under any rule of evidence.

The COURT: I think it is clearly admissable. The district attorney had no personal knowledge of anything, and he told you so, and Mr. Brown was on the ground there, and of course the situation as it existed is what the court wants to know. I don't see how that can hurt him.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): What time was your question to have reference to?

Mr. JOHN S. LITTLE (of counsel for the State): Pending the shipment of these parties. I don't know what hour it was or what date.

(Stenographer reads question.)

42 Mr. B. R. DAVIDSON (counsel for St. L. & S. F. R. R. Co.): Does the court hold that what he recommended or what he communicated to his company is legitimate evidence?

The COURT: That might have some bearing upon it.

Mr. JOHN S. LITTLE (of counsel for State): He is virtually one of the parties to the suit.

The COURT: The Kansas & Texas Coal Company cannot speak except through its employees or manager.

The WITNESS: I wrote my company, advising that no men be shipped in here at the present; that I thought there was a probability of the strike being closed without any resort to those methods if our people would be allowed to work and get the proper protection from the State authorities to enable them to work without fear of violance; that we had some men in the mines now, and if they would be allowed to work peac-ably others would follow, and I would advise the president of the company, at the present time at least, not

to insist on sending in foreign labor; but I did not not say that it would cause riot and bloodshed, but I believe I did say that there might be trouble, and I wanted them to take such action that if his property was damaged by a riot through the State authorities not taking the proper course to protect it, that he might be enabled to to sue the country or the State in the courts and get damages for property destroyed by riot and violence.

Mr. JOHN S. LITTLE (of counsel for the State): You haven't quite answered the question yet. Was it not your opinion at that time—at the time you wrote these letters, whether you expressed it or not to that effect—that the importation of these foreign laborers would create trouble and bloodshed? Was that your opinion at that time?

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): We object to that on the additional ground that he is asking for a matter of opinion. Anything that Mr. Brown may know of the facts he has a right to answer, but when you come to calling for a man's opinion that is going a little too far.

The court must draw these conclusions and not the witness. We object.

43 The COURT: I think, in this kind of a case—I think a man in the position of Mr. Brown, the position he occupied there, the manager of the company, his knowledge of the situation and the people and everything gives him a right. I would like to hear his opinion anyhow.

Mr. JOHN S. LITTLE (of counsel for t-e State): Let us have it.

The WITNESS: It was my opinion that unless there was a sufficient manifestation of force to protect men from any attack that might be made upon them, that there would be trouble. That was my opinion, expressed to Sheriff Harrell.

Q. I want to ask you this: whether or not you know that it was the purpose of the company in shipping into that mine negroes that it was done for the purpose of humiliating the miners and driving them to resent.

A. It was not.

Q. Not within your knowledge, to say the least of it?

A. It was for the purpose of getting coal out to fill our contracts. That is what it was for.

Q. So far as you know, that was the purpose?

A. There was no humiliation intended to anybody.

Q. You didn't think it would help settle the strike by putting them in? Up to the serving of the Federal court's injunction upon the miners, had they destroyed any of the company's property or anything of that sort?

A. Not a dollar's worth.

Q. The strike had been going on ever since February, I believe you say—the first?

A. Yes, sir.

Q. There had been no damage to property?

A. Not a dollar.

The PROSECUTING ATTORNEY: Do you mean February first or last?

The WITNESS: The last day of February.

Mr. JOHN S. LITTLE (of counsel for State): That was my mistake; and so all your guarding and all that sort of business was anticipatory. You were anticipating it would produce trouble when you brought these people in?

44 A. It was for the purpose of preventing trouble.

Q. Sort of a bond to keep the peace?

A. You can construe it that way if you choose.

Q. I am just liable to choose to do it.

A. We understand each other, Judge, first rate. You understand these things just as well as I do.

Q. Certainly I do.

Redirect examination.

By Mr. Jos. M. HILL:

Q. They have asked you some opinions, and I think you will probably aid the court with some others. If the sheriff had sent some guards over there at the time you asked for it, what would, in your opinion, have been the effect on the situation?

A. The effect on the situation would have been that the men at work would have continued at work and other men would have gone to work.

Q. In other words, it would have about broken up the strike, would it not?

A. That was my opinion.

Q. What, in your opinion, was the effect of the service of the injunction of the Federal court there on Sunday?

A. My opinion of the serving of the injunction of the Federal court on Sunday was that it would demonstrate to the men who were down there that the property was under the protection of the Federal Government, and also the men who were shipped in, and that it would have a deterring effect upon trouble that might be contemplated; that is my opinion.

Q. Would it tend to end the strike, so that these miners could go back into the mines and go to work, in your opinion?

A. It certainly would have that tendency, because, as I said before, if the men felt *felt* assured of perfect security, they would resume work, I am told—a number of them.

Q. And you think that injunction of the Federal court tended to assure them they would have protection, and a gre-t many men would have gone back to work?

45 A. That is my opinion.

Q. Did you have information that there was a great many, or quite a number, of these strikers there that wanted to go to work if they were afforded ample protection in doing so?

A. I had; yes, sir.

Q. What, in your opinion, was the effect of the message received

from the governor, through the hands of Deputy Sheriff Blanton, on Sunday evening, as affecting the peace of the situation?

A. It had just *the* exactly the opposite effect from the serving of the notice of the injunction of the Federal court. It had the tendency to encourage the men to remain out on the strike, because they felt they had the support of the State authorities, and that the State authorities by their action would prevent any men from coming in to mine coal, and so increase the necessities of the company, and consequently the effects be to put the men that were there to work.

Q. Now, in regard to the facts. Judge Little has asked you about the men and the guards you had over there. After Mr. Harrell refused to appoint deputies, didn't he at the same time inform you that you had a right to have arms and guards to protect your property, and to protect the men working for you?

A. Yes, he did so.

Q. You have kept what arms you have there and what guards you have there solely and entirely upon the company's property, have you not?

A. Yes, sir.

Q. That is your intention, to do that?

A. Yes, sir.

Q. It is not your intention to put arms in the hands of men to go out to attack anybody, is it?

A. No, sir.

Q. But merely to resist any attack if one is made upon them?

A. Yes, sir.

Q. That is the sole object in having the arms there and have the guards there, is it not?

A. That is the sole object.

Q. To try and protect these men and protect the property from any threatened violence?

A. Yes, sir.

46 Recross-examination.

By JOHN S. LITTLE:

Q. How many have returned to work of the strikers since the issuance of the injunction?

A. Up until last Saturday——

Q. The injunction was issued last Saturday is my understanding.

A. Is that the time you mean?

Q. I say since that time how many have returned to work? They have the guarantee now of its protection. How many have gone to work?

A. There have been six additional men belonging to the strikers or connected with the strike—I don't know that they are connected with the organization—but six additional men that were out and not at work have gone to work since Saturday.

Q. You don't know whether they were "scabs" or what?

A. I don't recognize any man as a "scab."

Q. You are miner enough to know what I mean by that?

A. I don't know what you mean by it.

Q. I am sorry of it. I was using my own phraseology and phraseology you ought to be familiar with, and you seem not to be. They denominate those that do not belong to the union as scabs. That is the way they talk about them.

A. No, sir; men that belong to the union are not scabs. That is not my information.

Q. What is your definition of the term? You told me you didn't know. I would like to hear it.

A. My definition of the term is, if a man goes to work at any place during the pendency of a strike, he is called a scab. That is my definition of it.

Q. I thought you didn't know what it was. I asked you if these men that went in were not scabs?

A. I say now that no man is a scab in my eyes. They call them by different terms, but that don't make them so.

Q. Were they men of that class that are denominated scabs that went in?

A. You may call them that.

47 Q. They are denominated among the men as scabs?

A. I never denominate any man as a scab.

Q. Were they of that class of men that come within your definition of a scab?

A. They were miners. They were men. They were not scabs.

Q. Were they men who fell within that definition you give of the class that they denominate scabs?

A. It is not my definition. It is the definition of others I give.

Q. The one you have repeated?

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): I think we are here to find out the facts and not to get a lesson in philology.

Mr. JOHN S. LITTLE (of counsel for State): I confess we have run a little ways off. Mr. Brown stated that the injunction had the salutary effect of putting the men back at work. I was trying to find out how many went back to work. I was trying to ascertain if they were ones that were on the strike.

A. They were; yes, sir.

Q. That had been ordered out with the other class of independent miners?

A. I don't know whether they belonged to the union or did not. You must remember that I have no personal knowledge of the men that belong to the union and those who do not.

Q. You don't know whether they were of the same class that went out or not, do you?

A. I know they were at work for us before the strike, but I don't know whether they belonged to the union or not.

Q. I will ask you if you know how many men your company contemplated importing into the mines there.

A. I could not say anything about that.

The PROSECUTING ATTORNEY: Who is Mr. Doubleday?

The WITNESS: There is the gentleman, sitting there.

The PROSECUTING ATTORNEY: What is his position in the mines?

48 The WITNESS: General superintendent of the company.

The COURT: What became of those thirty miners? Where are they now—those that were going to be shipped in?

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): He said that they had been sent to other mines of the company.

The COURT: Where?

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.). Not in Arkansas.

The COURT: I want to know where they are.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.) to witness: State, if you know. I don't know whether he knows or not.

The WITNESS: I don't know, of my own knowledge, where they are.

The COURT: Have you information?

The WITNESS: I have been told where they were sent.

The COURT: Where is that?

The WITNESS: They were sent to Cherryvale, in the Indian Territory.

The COURT: Were they sent there to be located permanently?

The WITNESS: They were sent there to be located permanently.

The COURT: You don't intend to bring them here?

The WITNESS: Not those men; no, sir.

The COURT: Have you any other men on the way now?

The WITNESS: Not any to my knowledge.

The COURT: Have you any information as to any being on the way?

The WITNESS: Not any information as to any being on the way.

The COURT: Now, the question I am going to ask you here—of course, it is not material, so far as the matter before the court is concerned, but I want to know, in as short a way as you can tell me, what is the difference between your company and the striking miners?

The WITNESS: The difference is a question of advance in prices and the question of rules and regulations governing the operations of the mines.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): I have one of the demands here if you want to take that and explain it to the court.

The COURT: What brought about the strike? Do you know? Was it discharging fifty or sixty men? Was that it or not?

49 The WITNESS: I have been told that that precipitated the strike.

The COURT: That was the first cause of it?

The WITNESS: I have been told that that brought it on quicker than it would otherwise have come, but I don't know of my own knowledge that that was the cause of the strike.

The COURT: What demands did they make? I have no right to pass on it, but I just simply want to know.

The WITNESS: How is that?

The COURT: What demands did the striking miners make on the company?

The WITNESS: They demanded six cents advance on the price of mining coal, and then they demanded advanced in the prices of day labor, the various kinds of day labor that is employed around the mines, from 25 to 20 cents a day. They demanded that these rules be complied with, and they also demanded—that is, the general rules that they make a demand for compliance with; and then there is what is known as the local rules governing the individual mines, such as, for instance, that no man shall enter the mine on a day when the mine is not hoisting coal; that all men shall come out of the mine at one o'clock on Saturdays; that if a union man's wife or any of his children or he dies himself that the mines shall remain idle on the day on which the deceased is buried; that if a miner is so unfortunate as to be killed in the mine the mine shall stop work from that time until the time he is buried, and rules such as that. It is not necessary to enumerate any further, I think, Judge?

The COURT: That is all I wanted to know.

The WITNESS: And it states, the conclusion of the rule states, that any miner not complying with these rules will have his turn stopped the first time the mine works or the first day that he works after he has committed the offense. Miners work by the turn, and have got cars to load their coal in, and what is known as a "turn," he gets his car in turn to load. There is not a car for every man in the mine, but the men that haul the coal from the mine go by turns from A to Z. If B would violate any of these rules that they adopted, when it came to his turn he would be passed and receive no turn—that is to say, he would get no coal down from the mine that day.

50 The COURT: Suppose you had shipped in two or three—we will suppose one, two, or three car-loads of miners—on Monday last, what would have been the condition at Huntington and in this county; say that they were negroes?

The WITNESS: Well, I would have been very glad, if I was able to say that everything would have been peaceable and quiet.

The COURT: Can you say that it would have been—that is, with your knowledge of the situation? You were there on the ground and you were experienced with the miners, and of course you were aware of the difficulties or of the troubles and the quarrels between the company and the striking miners?

The WITNESS: Will you not excuse me from answering that?

The COURT: I would rather have you answer it.

The WITNESS: I am rather inclined to the opinion that unless, as expressed to Sheriff Harrell, there had been a manifestation of a sufficient force to keep the peace under any circumstances, especially since I have been informed of the miners from Jenny Lind and Bonanza doing what they did, that there might have been a little fun.

Redirect examination.

By Mr. Jos. M. Hill (of counsel for K. & T. Coal Co.):

Q. Since you have gone into the question of opinions, I will ask you if in your knowledge of the situation, if there had not been any interference by the governor in directing the company not to receive any negro miners and the railroad company not to transport them, and merely the injunction of the Federal court should remain on Monday, and you had brought in three cars of negroes or six carloads of negroes, what, in your opinion, would have been the result?

A. In my opinion, the result of a peaceful solution of the question would have been much greater than it would after that command of the governor's.

Q. As I understand you, you largely base your apprehensions that there would have been trouble on account of the action taken by the governor?

51 A. And the sheriff under the governor, and personally responsible to him.

Q. Without that action you think the chances of a peaceful solution were very much better?

A. Very much better.

Q. In fact, were you not satisfied with the situation Sunday afternoon, and of a peaceful ending of the strike?

A. What made me feel very happy, under the circumstances, was this: A pit boss at one of our mines came to me in the afternoon and told me that a delegation of our men wanted to meet me on Monday, as employees of the Kansas & Texas Coal Company, to try to effect a settlement of this trouble, and wanted me to make an appointment with them. I said I would gladly make an appointment with them and did so. An hour or two after that, when it became known—the proclamation of the governor, if I might call it so, became known—the pit boss came to me again and said that one of the men that had been at him before had come back and said the deal was off; they didn't want to meet. Consequently, I am justified in the opinion that if things had went on as contemplated under the injunction by the Federal court that there might have been a quiet and peaceful solution of the difficulties, and very soon.

Q. That is your best judgment of the situation?

A. Yes, sir.

Q. I believe the court asked you some questions about the discharge of the sixty union men as precipitating the strike. Was that any concern of this company or the Kansas & Texas Coal Co.?

A. No, sir; not at all.

Q. Where did that occur?

A. I understood it occurred down here in the Territory in what is known as the Choctaw mine.

Q. Did you know of any serious complaints or grievances existing among your workmen prior to their demand upon you?

A. Not any serious complaints. There are always complaints, but there were none more than usual.

52 Q. In answer to the court's questions about the differences in those scales, I wish you would please state to the judge just what the difference would be in the practical result to the miners in their day's wages under the scale that the company has operated upon and under the scale as proposed by them.

A. That would depend entirely upon the capacity of the miner to work.

Q. What do the miners down there generally make?

A. All the way from a dollar and a half to four and five dollars a day.

Q. Take your dollar-and-a-half man and your four-dollar-a-day man and state to the court what difference it would make in his wages whether the company adopted the union scale or whether they went on under the old scale.

A. That dollar-and-a-half man, it would make about eighteen or twenty cents; that four-dollar man, it would make about 48 or 50 cents.

Q. The average is about $2.50 to $3 a day?

A. Yes, sir.

Q. It would make about how much difference?

A. To a $2.50 man it would make about 30 or 32 cents a day.

Q. That is about the only difference in the practical workings of the two scales, so far as it would place money into the miner's pocket for his labor?

A. Yes, sir; the coal-working miner; but there are a great many men connected with the mines that are not coal miners. They are employed at various kinds of day work, and their wages, as I said before, would be increased from 20 to 25 cents a day by the acceptance of the new scale that is presented by the organization.

Recross-examination.

By Mr. JOHN S. LITTLE:

Q. With regard to these demands you have been asked about, has there been any effort on the part of the mine organization, as you call it, to secure an arbitration of these questions? This is simply a proposition for arbitration, in effect; it is not a demand as you call it?

53 A. Say, Judge, if an individual was to present that scale to you and say if you did not sign it by the 28th day of February or your mine would be stopped, what would you call it?

Q. I would either propose to him some means of settlement, or I would tell him to stop the mines.

A. You would call it a demand, wouldn't you?

Q. I asked you if there had been any effort since this strike began—I don't know who is to blame—if there had been any effort to arbitrate this dispute between the men and the company?

A. I understand that the officers of the organization have asked the officials of the coal company to confer with them on these demands.

Q. On these disputed questions?

A. Yes, sir.

Q. Do you understand that the companies have refused to do that?

A. Yes; I do so; some companies have.

Q. Including this one?

A. There is another thing that I do know—I know that men who have conceded to the demands have been called out again.

Q. That is owing to affecting more interests than the single mine, I suppose; affecting the district, I suppose?

A. Probably so; probably that is the case.

The COURT: What is the name of the man who acted as agent for bringing the miners in? Who was that?

A. I don't know his initials, but I can procure them. His name is Jones.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): What is his business?

The WITNESS: Locomotive engineer for the company at Bevier, Mo.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): He is not a coal miner; he is just detailed for this work by the company?

A. Yes, sir.

(Whereupon the witness Bennett Brown was excused and other witnesses examined, after which BENNETT BROWN was recalled and further testified as follows, to wit:

54 Redirect examination.

By Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.):

Q. What experience have you had with working with the unions?

A. I have had a very varied experience.

Q. You have heard the court's questions to Mr. Doubleday, so that you can see the point that is in the court's mind. I wish you would in your own way, without my asking you any questions, go ahead and answer those questions that have been propounded by the court.

A. I was a very active member of labor unions myself for a great many years, and was intimate for many years with the leading officers of miners' unions in America. I was very intimate with John Samuel, who was president of the Miners' National Organization back in 1873 and 1874. I was for many years an intimate and bosom companion of John McBride, who was the first president of the United Mine Workers of America; for ten years lived as close with him as you can do outside of filial relationship. Mr. Ratchford, a late president of this miners' organization, has stated in a public speech that the first idea he ever had of labor organizations fell from the lips of your humble servant. I know something about labor organizations, and I can speak upon labor organizations intelligently, and if there is anything you want to know in connection with labor organizations, I will be very frank to answer any questions that are put to me.

Mr. JAMES BRIZZOLARA (of counsel for K. & T. Coal Co.): What is the reason that your mining company will not treat with the union or with a committee from the union, or with men not in your employ awaiting on you as a committee? Just go right ahead.

A. My opinion is that the reason why my company will not treat with members of the organizations or with the executive board of the organization is that they do not want to be dictated to in the management of their property by men who absolutely know but little of the details of the management. The officers of the
55 United Mine Workers of America have vast authority over a large section of country, and while in many instances they may be intimate with the details of the work and know what is beneficial for both workmen and employers, yet in all instances they do not. Miners' organizations, like everybody else, when they become supreme sometimes become arbitrary, if I may be allowed the use of that term, and interfere with things that they have no business with. Some of those things that I mentioned as being in connection with the local rules I do not think that miners' unions have any business interfering with. If it was a question of price alone—if it was a question of how much they would receive per day or per ton, I have not a bit of doubt that the operaters of this section of the country would meet with them tomorrow and discuss it, but when it becomes a question of whether the officers of the organization will take the management of the property and relegate the officials of the corporations to the rear, then they draw the line, because, my friends, it is like this: When you will consent to confer or arbitrate with a man upon anything of which you are assured in your own mine you have a right, you at once convey a suspicion as to whether the right belongs to you or not, and whether you would consent to confer with the members of the organization or the heads of the organization as to whether your property or your mines should run one day in the week or six days in the week or eight hours in the day or ten hours in the day or men quit on Saturday or anything of that kind, then you imply a doubt in your own mind as to whether you have a right to run your own property as it suits your own will or not. That is the reason, in my opinion, why that the coal companies refuse to treat with the executive board of the miners' organization, and I am frank to say so.

Mr. JAMES BRIZZOLARA (of counsel for K. & T. Coal Co.): Does not the executive board require a majority of all the mines to come in before they will arrive at any understanding?

The WITNESS: That is implied by the late action of the organization in this district. A number of small mines signed the scale and went to work and worked peaceably and satisfactorily, so far as I know, for a number of days, when they were called out by the officers of the organization, and they laid down and quit.

56 Mr. JOS. M. HILL (of counsel for K. & T. Coal Co.): This scale we had here a moment ago—wasn't that one that had been signed up and agreed to by the coal company—that is, the Crescent Coal Company? Do you know about that being agreed to and the strike still declared on after they had signed that scale?

A. I cannot specify as to any particular company, except that I know of a few small operators engaged in a small way in mining coal, just signing this scale as presented by the organization, and were permitted to go to work and continued at work for some time, and then, for some reason or another, the organization concluded it was to their interests to ask them to stop, and they stopped.

Mr. JAMES BRIZZOLARA (of counsel for K. & T. Coal Co.): When a committee from the union waits upon you, have they any right to accept or enter into an agreement with the company until after they refer their action to the heads of the union?

A. They could not make any compromise with the company on their own account. They might make an agreement with the company. As I understand it, at the first inauguration of this strike any individual company might have made an agreement with the organization and kept on at work by signing the scale. Afterwards, I understand, by action of the organization, that the organization refused to treat with any company individually unless they could secure at least fifty per cent. or more of the coal companies engaged in doing business in the district.

Q. And that is another reason why your company will not treat with the union?

A. That is one very large reason why they will not.

(Whereupon the witness, Bennett Brown, was again excused, and after the introduction of other evidence was recalled and further testified as follows, to wit:)

57 By Mr. Jos. M. HILL:

Q. The court asked Mr. Bedwell a question which he said he was unable to answer because he did not know, and that question, in substance, was why the K. & T. Coal Company here seek to bring in negro instead of white labor. I wish you would answer that question to the court.

A. They do not seek to bring in colored miners instead of white miners. They seek to bring in any miners they can get. The reason why, in my opinion, that they can get more colored miners to come in, under existing conditions, than they can get white miners is because the colored brother is a little thicker-skinned than the white brother and he is less sensitive to vile epithets being thrown at him. It humiliates him less and angers him less, and he is less subject to resent interference and insults of that kind; consequently they get more colored men than they can get white men to come in under these conditions.

The COURT: Would not the shipping in of car-loads of negroes into Huntington have the tendency to degrade and insult the citizens who are white, as well as miners, in your opinion?

The WITNESS: That is a question I am unable to answer. So far as I am individually concerned, I can say this: That I would rather live with a white man as a neighbor—that is, the average white man as a neighbor—than I would with the average colored

man as a neighbor, but the presence of a colored man would not be insulting or a humiliation to me, in my estimation.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): In the estimation of the miners, do they take it as an insult that these negroes are to labor with them?

A. They have some objections to working alongside of colored laborers, especially at the beginning, until their olefactories become accustomed to the odor emanating from their neighbor.

Q. They do work with the negro after they become used to this odor?

A. Certainly they do.

Q. They work with them right along in your mines?

A. Yes, sir.

The COURT: Of course, the corporation you represent is
58 doing business in this county. They have a right to do business. They have a right to do business in this county. Now, do you think that that corporation has a right—well, in the first place, suppose these negroes—you do not give them homes, do you—provide homes for them?

The WITNESS: We furnish them houses to live in by paying rent.

The COURT: They pay the rent?

The WITNESS: Yes, sir.

The COURT: Those sixteen negroes you have down there, have they any property or money?

A. Well, I don't know, but I am inclined to think that their earthly possessions are not very great.

The COURT: I want to ask you if the company is under obligations—suppose you were to discharge them, with or without a cause, is the company under any obligation to send the negroes back to the place from whence they brought them?

The WITNESS: Not a single, solitary obligation, so far as I know.

The COURT: Then what becomes of them? They get no money, then, except what their daily labor provides for them, do they?

The WITNESS: Not a penny.

The COURT: They pay their house rent, and all that? Then would it be possible for these negroes, having nothing at all to commence with, to lay up anything much?

The WITNESS: That would depend upon his own self-denial and his industry and thrift.

The COURT: Then the company is under no obligation? When they are discharged, as of course they will be sooner or later, unless they die——

The WITNESS (interrupting): No; not necessarily. He may leave the company voluntarily, of his own volition; but he need not necessarily be discharged as long as he performs his duty satisfactorily to the company.

The COURT: Suppose that they of their own volition leave the country? They have a right to do it if they want to?

The WITNESS: Certainly.

59 The COURT: Then you are under no obligation to take care of them any further?

The WITNESS: I should think not.

The COURT: Nor look after them?

The WITNESS: I should think not.

The COURT: Then do you think it is right—these people would not have anything—*to* you think it would be right and proper for your company to bring in hordes of negroes here on the people of Sebastian county, to become charges upon the county and vagabonds? Do you think that is right and proper?

The WITNESS: I beg your pardon, but I do not understand that our company is bringing in any people to become charges upon the county.

The COURT: I am saying suppose they leave your service. They have a right to do it at any moment.

The WITNESS: They can go into the service——

The COURT (interrupting): You are under no obligation to put them out of this county or State?

The WITNESS: None whatever.

The COURT: If they are too poor to get out of the State, *the* they must necessarily live here or die.

The WITNESS: I suppose that is the condition.

The COURT: Do you think this people ought to be inflicted for your private benefit with a charge upon the county of these negroes?

The WITNESS: We are not inflicting the county with those people.

The COURT: Wouldn't that have the effect to do it?

The WITNESS: It would not, in my opinion. I think that is stretched to a considerable extent.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): Explain why it would not.

The WITNESS: Suppose, for instance, that a man comes into the State voluntarily, seeking employment from a company——

The COURT (interrupting): That is one question that I wanted to ask you. Do these negroes come in here voluntarily?

The WITNESS: They do.

The COURT: Do not you furnish them cars to proceed with?
60 Are you not soliciting them to come in?

The WITNESS: We are soliciting them.

The COURT: If you had not said a word to them about coming in, would they have come in? (Laughter.)

The WITNESS: That is a question. They might not have come in, but I say that asking them to come in is not forcing them to come in.

The COURT: I don't say it is forcing them, but then would these negroes around seeking employment—would they have come to Huntington for it?

The WITNESS: They do.

The COURT: Did these that you brought?

The WITNESS: No; they did not.

The COURT: Did that car-load that was shipped up into the Territory—were they seeking employment there?

The WITNESS: They were not.

The COURT: Of course, you have an agent out hunting for them—hunting up miners?

The WITNESS: That is my understanding.

The COURT: Do you know why it is the agent—that the agent at this particular time—got negroes, and nothing but negroes?

The WITNESS: Because of the answer to the first question propounded by Attorney Hill here.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): Repeat it, to make it clear.

The WITNESS: Because the white man is more sensitive to insult than the colored man.

The COURT: Negroes—where there is a strike don't you think there is always more or less danger, or apt to be, where there is a strike on?

The WITNESS: The bringing in of negroes?

The COURT: I ask you to take a strike as a strike, when the men are not at work or not engaged in their work at all. The company and the men are at outs over, maybe, a frivolous matter. I
61 don't know anything about that. Isn't there liable to be trouble then at any moment between them?

The WITNESS: Between who?

The COURT: More so than if they were going on and doing the work?

The WITNESS: Undoubtedly so.

The COURT: Why, yes. of course. Then, Mr. Brown, if the negroes are not so sensitive to insult as a white man, then that must necessarily mean that he is of a lower class of humanity, don't it? (Laughter.)

The WITNESS: I take it that that is a question.

The COURT: Then do you think you owe it to this county to ship in a low class of humanity among the people here?

The WITNESS: I want to say, Judge——

The COURT (interrupting): In other words, don't you believe it is the *the* duty you owe—you are here and have a right to do business now—there is nobody that ever questions that at all—and you have a right to employ, peaceably, any men that you want to employ; nobody questions that now; but do you believe that you have a right, as a representative of that corporation, to ship in upon these people a low grade of humanity—say, possibly, convicts, or even negroes—do you think you have the right to do that?

The WITNESS: I do think that the corporation or the company have a right to ship in labor to operate their mines.

The COURT: That does not answer my question. Do you think you have a right to select the lowest grade of men and ship in here?

The WITNESS: If we choose to do so; yes.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): That is candid, at least.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.) (to the witness): You take it, then, that a corporation or a person has a right to employ or give employment to a bad man as well as to a good one?

The WITNESS: He has that right.

62 The COURT: Let me ask you this question: Would you answer the court and say you have a right to ship into Huntington one hundred whores to run your mines? (Laughter.)

The WITNESS: We have enough of them now carrying the "white man's burden" without importing any more. (Laughter.)

The COURT: Do you contend you would have the right to ship in the very worst class of citizens upon the county?

The WITNESS: Laborers you mean?

The COURT: Yes; suppose they were convicts—ex-convicts?

The WITNESS: That is a hard position to put a man in, but when you come down——

The COURT: You are an honest man. I know you are.

The WITNESS: Whether it is right to do it or not—whether he has the legal right or not to do it or not—I say he has the right.

The COURT: That is your opinion of the law?

The WITNESS: That is my opinion of the law.

The COURT: Now, then, as a member of society, living down here, and doing business, do you think you have a right to do it? Do you think it is your duty to do it or do you think it is your duty not to do it?

The WITNESS: There is a moral right and a legal right.

The COURT: How is it as to the moral right?

The WITNESS: It depends upon the moral convictions of the man.

The COURT: Then, according to that, if a man had no moral convictions at all he could ship in anybody? (Laughter.)

The WITNESS: Yes; he can ship in anything.

By Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): You take it that your company has the right to work a man whether he is an ex-convict or a man of high standing in the community?

A. So far as his legal rights are concerned, in my opinion, there is no difference.

63 Q. He might be the worst man in creation or the best?

A. Yes, sir.

Q. And you would still have the right, as you take it, to put him to work in your mines, if he was willing to work for you, for the wages which you offer?

A. Yes, sir; absolutely, in a legal way.

The COURT: Would you have a right to ship in that class of men—ship them from another State into this State?

The WITNESS: If the laws of the United States or of this State permit you to do so you have a legal right to do so.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): I want to know if your company has not made every effort that it believes it can make to get a good class of miners to operate its mines.

A. Yes, sir; I think they have made all the effort they could make to get their mines started to work.

Q. It is not your purpose nor the purpose of your company to bring in any low grade of people merely because they are a low grade of people, is it?

A. No, sir.

Q. And the only purpose you have got in bringing in any class of people here is to work your mines?

A. Yes, sir.

Q. And you are getting the best class that is obtainable under the circumstances?

A. Yes, sir; that is my understanding.

Q. Is that your endeavor?

A. Yes, sir.

Q. That is your advice to your company, to get the best class under the circumstances.

A. It would be, if I offered any advice on the subject at all.

Q. So far as you know, isn't that the determination of all the officials of your company?

64 A. Yes, sir.

The COURT: Did you ever try, since this strike has been on, to hire any men in Sebastian county—negroes or whites—that is, outside of the miners?

The WITNESS: I never went out soliciting any men.

The COURT: Do you know whether your company ever did try in this county to hire a single miner to work in that mine since the strike has been on?

The WITNESS: Yes; we have.

The COURT: Why was it that you did not succeed?

The WITNESS: Put that question to Mr. Mitchell. He can answer it.

The COURT: Do you know whether your agent ever come to Fort Smith to see if he could hire negroes? Did your agent ever come to the Fort Smith district to see if he could hire negro or white miners?

The WITNESS: No; because we know there are no white miners or negro miners for hire in Fort Smith. We know there are no mines located in Fort Smith, and miners do not live where there are no mines.

The COURT: That might be true and it might not. I think you are correct.

The WITNESS: That would be the supposition.

The COURT: Has your agent gone into the other counties in the State of Arkansas to see whether he could get miners, negroes or whites?

The WITNESS: No, sir; because the other counties are in the same condition that our county is in. If we could not persuade our own miners to go to work, it would be futile, under the circumstances, to go to the other counties, laboring under the same conditions exactly. Will you allow me to give you my individual opinion of why the company have been under the necessity of pursuing this course?

The COURT: You can do so; yes.

The WITNESS: Then I want to say this: that if the men who wanted to work in Huntington had been allowed to use their own option, without molestation or interference in the way of threats or insults, that it would not have been necessary for the Kansas & Texas Coal Company to go out into other fields today to secure the

65 necessary amount of labor to operate their mines. Now, that is my honest opinion. I will give you that and say that if

the miners—now, remember that when I say "the miners," there are miners that would no more do this, Judge, than you sitting in that chair; but there are others, and I want to say to you that if our men had not been molested and we could not have secured under peaceable conditions enough labor to operate our mines without going into other fields to import this class of labor that we are now talking about, that before I would have staid and put those men to work I would have resigned from the employment of the company and quit; but when those who wanted to work were interfered with until their wives left their houses at midnight to come to my house, begging for protection for their husbands to be enabled to go to the mine and work sufficient to feed his wife and children, then that went a little too far for me, and while I did not countenance it at all, did not advise it, yet under the existing conditions I think our company had a perfect right to open its mines by imported labor, and had the right, if it chose to do so, to go out and secure that imported labor; and now I want to say further, Judge, and I want my organization friends to listen to what I say—if the men came out on a strike for a legitimate cause, and, instead of fifty per cent. of them leaving to seek work in other fields, ninety per cent. of them could be induced to do so, leaving ten per cent. of these men in the place to maintain themselves, and the organization, if it chose to do so, could maintain these ten men there until they died a natural death and were carried to their graves, the property of the Kansas & Texas Coal Company, or any other coal company, would stand there until it rotted and fell to the ground if we hadn't the right to go into those same fields where these other men have gone voluntarily to secure work and try to secure laborers to operate their mines. That is what I say.

Mr. Jos. M. HILL (of counsel for Kansas & Texas Coal Co.): Then it is a necessary conclusion from this situation that unless you are permitted the legal right to bring in laborers from other States to take the place of those who will not labor that your property is destroyed?

A. Yes, sir; confiscated.

66 Q. The question was asked here about these men becoming charges on the county; that if you bring in these negroes here that they would be charges on the county. Suppose these negroes quit, what would become of them?

A. I don't know what would become of them.

Q. What is the rule with miners? Where do they go? Do they scatter out?

A. They go to seek work at their vocation somewhere else, like all other people.

Q. Do you know of any of these people becoming charges on this community?

A. None that I know of.

Q. Do you apprehend that there is any danger of any of these men becoming charges upon Sebastian county if they are turned out tomorrow?

A. No, sir; I have no apprehension that any of them will become public charges.

Q. Do you know whether any of these imported men who brought about this strike are tax-payers of the county; whether they would be affected as tax-payers by these people becoming charges?

A. The men who are on a strike?

Q. No; these imported men who started the strike. Are any of them tax-payers of Sebastian county?

A. Do you mean the gentlemen who come in here to organize the union?

Q. Yes.

A. I should think none of them are.

Q. They have no interest in the county from a tax-paying standpoint?

A. I should think not; no, sir.

Q. Is there any apprehension in the community at Huntington that these men that you are bringing in or that you desire to bring in will become charges upon that community?

A. If I give my individual opinion, I will say not.

Q. You would likely know if there was such apprehension, would you not?

A. I would be likely — know it.

Q. Do you know whether such an apprehension as that has actuated this movement to prevent them?

67 A. No; I think not. I am sure not.

Q. I wish you would explain to the court the question which he has asked some of the other witnesses, and which some of the other witnesses have explained—that is, working your mines with raw and inexperienced men. Why can't you come to Fort Smith and get the laborers here on the streets, working for lower wages than you are giving, or going out and get the farmers of Sebastian county that are not making as much as these miners, and put them to work? Explain that to the court.

A. I can only answer that question or I can best answer that question by telling you my rule in charge of our mines. If there is a man comes to the mine seeking employment at Huntington, I ask him if he is a coal miner. If he says he is not, or even if he says he is, and I have reason to believe he is not an experienced miner, I give him an order to the pit boss to give him employment, but only along with and under the supervision of and in charge of an experienced miner. That is my invariable rule.

The COURT: Now, under existing circumstances could you get even the best class of negroes to go there to mine?

The WITNESS: Right here?

The COURT: I mean from anywhere. When you state there is a strike on, and state the circumstances to the negroes even, could you get the best class of negroes to go there as miners, or would they be a class or kind of desperate men, willing to take the chances on most anything?

The WITNESS: My answer to the first question answers that. A colored man, I suppose, is susceptible of civilization as well as any-

body else, and the more highly he is civilized the more sensitive he becomes. Consequently, what you would call the better class of colored people would be more disinclined to put themselves in a position open to insult and abuse than those of a lower character.

Mr. Jos. M. Hill (of counsel for K. & T. Coal Co.): How do these men you brought in there compare morally with the miners who belong to the union down there at Huntington?

68 A. Well, as I said before, there are miners and miners.

Q. I am talking about the *b*egro miners that belong to the union. I want you to make a comparison between the two sets of negroes.

A. Morally, I suppose there would not be very much, if any, difference at all.

Q. They are about a fair average with the negro miners who belong to the union and are in this strike down there?

A. Yes, sir.

Q. What is your information about this car-load of thirty that were sent to the Territory? How would they compare with the average negro miner?

A. I was informed by the general superintendent of the company that they were a very good-looking lot of fellows; well dressed, clean, and seemingly well behaved.

Q. Do you remember that the superintendent said to you, in my presence, that they were better than the average?

A. Yes, sir.

Q. You did not see them yourself?

A. No, sir.

Mr. John S. Little (of counsel for the State): Why not let the superintendent tell that?

Mr. Jos. M. Hill (of counsel for Kansas & Texas Coal Co.): He had to go off last night.

Mr. B. R. Davidson (counsel for St. L. & S. F. R. R. Co.): You speak of the sensitiveness of these parties that are working, and that the white man is a little more sensitive than the negro, and that the cultivated negro is a little more sensitive than those that are uncultivated. Now, with reference to the moral standing and the law-abiding character of these men that are referred to, is it not equal to any class of men that work in the mines? I am not speaking about their sensitive natures or their sensibility to insults.

A. Well, my experience has been that there is a just as moral and just as refined and just as gentlemanly men working in the mines as there is in any other employment or profession, so far as that is concerned; and there are just as low, immoral white

69 men working in the mines as you can pick up anywhere in the world.

Mr. B. R. Davidson (counsel for St. L. & S. F. R. R. Co.): You speak of the negro being less sensitive than the white man. Do you mean by that that he is a law-breaker any more than the white man?

A. No; I do not mean as a law-breaker at all; but I mean by

him being less sensitive that he would be less likely to resent insult.

Mr. B. R. DAVIDSON (counsel for St. L. & S. F. R. R. Co.): But he is not the less a law-abiding citizen?

A. Not in that light at all. I did not mean it in that light.

Mr. B. R. DAVIDSON (counsel for St. L. & S. F. R. R. Co.): He is not the less an honest laborer?

A. No, sir; not any the less an honest laborer.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): Because they stand the taunts of others a little better, you do not mean to be construed as meaning that they are less law-abiding or less peaceful than the others?

A. I mean to say they are more law-abiding, because they can stand more insult without violating the law than the other fellow could.

Q. Then, if you bring in the negro, who will stand the taunts, there is less liability of friction than if you brought in a high-strung Anglo-Saxon?

A. Most unquestionably so.

Recross-examination.

By Mr. EDGAR E. BRYANT:

Q. Have you ever lived in the South where the community was largely negro?

A. I have.

Q. What portion?

A. Alabama.

Q. What portion of Alabama?

A. About 100 miles below Birmingham.

Q. How long did you live there?

70 A. About a year.

Q. Is that the only experience you have ever had in living in countries with a large element of negro in them?

A. Yes, sir.

Q. Just one year in Alabama?

A. Yes, sir.

Q. This report of Mr. Doubleday—you spoke of the superintendent—it was Mr. Doubleday you were referring to. He said they were a good-looking set of negroes—that is, a respectable looking set?

A. Yes; right good-looking fellows.

Q. He was upon the stand yesterday?

A. Yes, sir.

Q. He testified here as to what he saw of them, did he not?

A. Yes; I suppose so.

Q. He gave you no other information than that he gave on the stand?

A. Not a bit.

Q. So the information you got from him, no doubt, was the same that he intended to give the court here while on the stand?

A. Practically the same.

Q. And that is the only information you have as to the appearance of that body of negroes?

A. Yes, sir.

Q. Isn't this whole strike, isn't the foundation of it, the meat of it, the demand of the miners for recognition as an organization and the refusal upon the part of the company? Isn't that the real, crucial point in controversy? Of course, they have schedules that they put in, but they are mere incidental matters. Isn't the real point between them the demand for the recognition by the companies of their union?

A. Do I have to answer that question?

The COURT: Yes. Just answer it. I would like to hear it.

The WITNESS: Well, in my opinion, that is so, along with other things; that the recognition of the union is one of the contentious features.

71 Mr. EDGAR E. BRYANT (of counsel for State): Isn't that the one point around which all the others cluster as minor issues?

A. I should say that it is—that is, so far as we individually are concerned. I do not speak for any other company.

Q. But, in your opinion, isn't that really the point on which the battle is now turning?

A. If I was to give an honest opinion, I would say that the recognition of the union was the major feature of contention.

Q. Now, then, the miners who are out down there, who are striking, you say a large majority of them are willing to go back to work. If this other question was not in it, you could agree on terms with them, don't you think? That you could agree on the scales. There would be no trouble about that, if this contention wasn't in the way?

A. No, sir; I do not say that.

Q. Don't you believe you could, if this wasn't?

A. I don't believe we could.

Q. You believe that the greater part of them would still remain on the strike?

A. I believe that those who want to remain on a strike now would remain on a strike then.

Q. Then, you say that a large part of them would be willing to go back to work. Those who would be willing to go back to work are held out by other forces, you think?

A. Yes; I think so.

Q. One of the forces that hold them out is the desire to act in unity?

A. I am not sure about that.

Q. It is the power of the organization, you think, that holds them out?

A. I don't know that it is the power of the organization at all.

Q. You don't know what it is that holds them out?

A. I don't know what it is, and I don't know of whom it is composed. I am rather of the opinion that it is not composed of the

organization or that the organization does not countenance that policy.

72 Q. You do not think the organization countenances that policy?

A. No, sir; I don't think they do.

By the PROS. ATT'Y:

Q. Since you have no information save that which you have described of those that it was proposed to ship in last Sunday, I want to ask you with a view of determining the class of the eighteen you have. I believe you stated yesterday that they appeared to be a very good class of negroes. Did you, or is that true? I forget what you stated about it.

A. I might not say a very good class, but an average class, compared with other miners.

Q. With a view of better determining their class of intelligence and citizenship and moral proclivities, I want to ask you if it is not a fact that within the first twenty-four hours of their arrival there, there were serious disturbances, resulting in the loss of an eye among those?

A. Not to the loss of an eye, but to the blackening of an eye. We sometimes get an eye blackened and do not lose it. These fellows are liable to fall out and fight among themselves, just as you and I would, while we might not reach for each other quite as far as they would. The other day in the court here two of you came pretty near having an affair of that kind—you highly civilized gentlemen, that you would not think would resort to anything of that kind. You took advantage of the absence of the court and got to fighting each other. I noticed that you did not get very near each other—not quite as near as these fellows down yonder.

Q. Your testimony inferentially conveys the information for which I am asking, and yet I want to put the specific question. Who paid the expenses of the negroes that were brought in here?

A. Primarily they were paid by the company. Of course, it will be charged to them. It is now charged to them.

Q. Then it is paid by the company?

A. No; I beg your pardon.

Q. I mean it was advanced by the company?

A. Yes, sir.

73 Mr. JOS. M. HILL (of counsel for K. & T. Coal Co.): Advanced by the company and charged against their wages?

The WITNESS: Yes, sir.

The PROSECUTING ATTORNEY: You have explained that the company attempted to get, or rather that your idea is that they attempted to get and would accept, miners indiscriminately, regardless of color and character, and you have very aptly explained to the court how it happens to result in getting colored men *other* than *than* other people. I want to ask you if in this particular instance you did not start with the specific view of getting colored men?

A. We did not, so far as my individual knowledge goes.

Q. I will ask you if you have information on that point? Didn't

the company send a colored man—didn't the company send a negro and not a white man as the agent, with five hundred dollars in money, seeking these people?

A. That man Jones was a white man that brought in these sixteen colored men, as white as you or I.

Q. Jones was with the first set—the set that you now have?

A. Yes, sir.

Q. Was there not a colored man started from Huntington with $500 in money to circulate around, if necessary, to find colored miners?

A. There was not, positively.

Q. And, to your information, was a colored man sent from another point in the service of the company for such purpose?

A. According to my information, there was a man sent.

Q. Well, a colored man, from some point?

A. Not to my positive knowledge; no, sir.

Q. You state, not to your knowledge. I don't know whether you make any distinction between the word "knowledge" and "information." Have you any information?

74 A. I have information of a colored man being in the employment of the company for that purpose.

Q. You have?

A. Yes, sir; has been. Perhaps not now, but has been.

Q. From what point?

A. Originally he was working at Huntington, and I sent him to St. Louis with a horse—in charge of a horse, a riding horse—that we bought down in this country for the service of the president of the company, and my understanding—and I want to be perfectly plain and open about his matter—my understanding is when he reached St. Louis the president of the company had a conversation with him and employed him from that point to go out into the States and seek men for his work.

Q. Now, then, I will ask you if that is not the first agent, to your information, that was started out to seek miners to substitute these vacancies?

A. He is not. This man Jones was in the field before he ever left Huntington with the horse.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): When did this man get to St. Louis; do you know?

The WITNESS: I could not be certain as to the date, but I should judge it was on or about, probably, the 12th or 13th day of April, as near as I can remember.

The PROSECUTING ATTORNEY: In order that we may have at all times before the court the scale that you have referred to, in a separate paper, that is set forth in your complaint in the United States court?

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): Yes; I attempted to copy it correctly. I have not verified it. I think it is correct.

The PROS. ATT'Y: Then I will make reference to this. Since you have, evidently, wide familiarity and experience with the miners'

union—its conduct, experience, and rules—and have answered Judge Bryant that, in your judgment, the major contention is the recognition of the miners' union. I will ask you if the miners' union has not been recognized in Pennsylvania, Ohio, and the most of the larger mining States in the United States?

A. My impression is that it has.

75 Q. Now, I desire to ask you this question: If it is not a fact that of all of the questions raised in this scale and propositions submitted to the company, if the scales under which miners work in most of the other mining States, and the larger mining States, comprising larger mining interests, are not more favorable to the miners and the miners' union than the request made by your employees?

A. That is a very comprehensive question. Could you not condense it just a little bit and let me know what you are trying to get at?

Q. I will try it. Isn't the scale and terms for which miners work in other mining States of the Union more favorable to the miner than the scale proposed by the miners that were in your employ?

A. The scale upon which miners work in other States, you mean?

Q. Yes.

A. More favorable to the miners than the scale under which we were working?

Q. You can answer that first.

A. Or the scale proposed to us?

Q. Yes.

A. Then I say decidedly not, because the average wages for coal miners in Ohio, Illinois, and Pennsylvania will not compare favorably with the wages earned under even the existing scale before the strike.

Q. It is a fact that the miners' union is recognized in the other States?

A. Yes, sir.

Q. Then, if you know, perhaps you can answer this question: Is it not a fact that the miners' union, and the favorable scales under which they worked in the different States, including Illinois, did not prevail invariably, except about Virden and Pana, and that they struck only for the purpose of securing uniform rates, or rather to secure the same contracts that prevailed all over these other States, and all over the balance of Illinois, and were simply asked to come up to what the others were receiving, to wit, a recognition of the union, as well as an advance of the scale to what it was in the other places?

76 A. That seems to be the contention, so far as newspaper reports were concerned.

Q. Do you know what the actual facts are beyond that?

A. No, sir.

Q. Have you any reason to believe the newspaper representations were incorrect on that point?

A. I have reason to believe that newspaper reports of these things are never correct, and on general principles.

Q. Is it not a fact that in the other States where you say the miners' union is recognized they reached the scale they did by consultation by the miners' union and the mine owners or mine operators?

A. Partly by consultation and partly by coercion. That is my opinion, if you want my opinion about it.

Q. How do they fix the scale in other States?

A. They fix the scales by a joint committee.

Q. Joint between whom?

A. Between the operators and the miners. That is my impression about how these scales were fixed. Mr. Mitchell could give you more information on that line than I can, because he is in the business.

Q. They fix the scale by a convention of representatives of the two interests?

A. That is my understanding.

Q. When a question arises as to what a scale shall be, how do they reach it, then, in other States?

A. I am not positive as to how they reach it when there is a contention, but I suppose they reach it upon the principle of each man giving his opinion.

Q. Now, if in another State than where the union is recognized the miners make demand for an increase of wages, or, on the other hand, if the company indicates to the miners they will be forced to reduce prices for some reason on the part of the company, what is the result, and how do they reach a conclusion upon it?

A. I suppose they have a conference upon it, and see whether they can reach some amicable understanding to adjust the difficulty.

77 Q. Between the operators and the union?

A. Yes, sir.

Q. Then your company in this instance refuse to do that?

A. They have refused to do that, but the question of wages was not the only question.

Q. Certainly. It is a question of recognition here.

A. The question of wages was not the only question submitted by the miner's union.

Q. Whatever the question, the same method prevails in the other States?

A. I don't know anything about that part of it at all. I understand, so far as wages are concerned, they come to some mutual understanding by conference, but in regard to those rules I spoke of yesterday and regulations governing the operations of the mine, I have no knowledge at all of how they proceed.

Q. Since you have stated to Judge Bryant that the question of recognition was the major contention, is it not a fact that when this strike was first declared, the latter part of February, that there were only very few requests on the part of the miners at that time, and not near as many as in the present scale presented?

A. I beg your pardon. There were a great many more than was in the printed scale presented.

Q. You have been making concessions since that time?

A. No, sir; we have not, to my knowledge. There has nothing been submitted to us outside of the original scale, but the original scale was supplemented by a series of rules that was drawn up by the local organization and presented to the company for signature locally.

Q. If your company would recognize the miners' union and send a committee to meet with their committee, do you not believe that today this strike matter could be settled?

A. I don't believe it could.

Q. Don't you think it could have been done when the miners first submitted the proposition for a conference, before the feeling arose?

A. Had the executive board of the organization maintained their right to the enforcement of these rules and regulations that they had drawn up, I should say they would not have been settled.

78 Q. You don't know whether they would have maintained it if you had met them?

A. I just say if they had, and I do not see why a person submits a proposition if he does not mean to maintain it. We are not playing poker in this thing.

Q. You say in other States they settle these questions by conference?

A. I say they do the wage question. I know nothing at all about the side issues.

Q. You don't know how the miners ever did secure recognition from the companies?

A. Yes; I do know how they lots of times secure recognition from the companies.

Q. Whether unfairly or fairly, they did secure recognition in Pennsylvania, Indiana, Ohio, and Illinois?

A. Yes; I will acknowledge it all. You may take the eastern part of the country from the Mississippi river, and call it all, if you choose to do so, with the exception of one or two States. I am perfectly willing to acknowledge all of it.

Q. Isn't that also true in a great many States west of the Mississippi, to wit, Iowa and Kansas, and I don't know what others, if you know?

A. Well, really I don't think —. So far as my personal information goes, I have no direct knowledge; but so far as my information goes, I don't think that the organization is recognized by the operators in Kansas or Missouri.

Q. You said awhile ago that you did not intend to indicate that the less cultivated class of negro labor was more lawless. I will ask you on that very point if you do not think that they do become themselves thus insulting and provocative of riotousness and lawlessness after they have been imported and turned loose out of the stockades.

A. No; I have no knowledge of that at all.

Q. You think not.

A. I have not got any information on that.

Q. From your experience at Huntington, even for the short time

you have been out there as to these eighteen or twenty, is in
79 not a fact that they have been carrying private arms about the streets and away from their business, and long knives, or at least more or less of that?

A. Yes; I have heard of one man being arrested with a knife in his pocket, whose life had been threatened, and the woman with whom he was boarding had received a letter stating if she would not fire him out of the house the house would be blown up with dynamite. I did hear of his being arrested and a knife found upon his person.

Q. What kind of a knife?

A. I don't know. I didn't see the knife. I heard it was a butcher knife.

Q. What class of man or nationality was he?

A. He was a German of some kind. He may have been—I don't know. I call all Southern Europe fellows Germans.

Mr. DAN. HOGAN: He was a Swede, wasn't he?

The WITNESS: He might have been a Swede.

The PROS. ATT'Y: What advice did you give him, and what did you say to him?

A. To go into that whole story and make it clear to the court: I was out of town the day he was arrested. I was informed he had been arrested and hurried before the justice of the peace, without any show of giving a defense.

Q. Without any show of raising a defense?

A. Yes, sir; and had been found guilty and fined $50 and costs for carrying concealed weapons; and when I came into town they were hauling him off to jail. I asked the constables to stop and take the man into my office, and I would take an appeal and give bond for the man's appearance in the district court. All of which was done. Under the circumstances I went to the telephone and called up Mr. Herrell, and explained to him that this man had been arrested for carrying a concealed weapon.

Q. Sheriff Harrell?

A. Yes, sir; and that the man's life had been threatened; that he had been vilified and abused and called all kinds of insult-
80 ing names; that the woman with whom he was boarding had received a letter stating if she would not fire him out of the house that her house would be blown up by dynamite, and saying that they hoped she would get him out, and then if not they would receive their answer on the night of the explosion by rough rider from the Wild West. The sheriff told me that he had no authority under the law to give that man permission to carry weapons to defend himself. I come back and I said to this man, "I understand that the law of Arkansas will not permit you to carry concealed weapons, but I do not understand that it will prevent you from carrying a gun or a Winchester or a United States cannon if you choose to do so, and if any man molests you or attacks you my advice to you is to shoot him and blow his head off in self-defense, but to be sure and let the other fellow be the aggressor, and only

act in the defense of your own personal safety." That was my advice to that man.

Q. Now, the cause of your having the conference you had and the cause of your expressing yourself was information of an injustice that had been done to that man?

A. Yes, sir; the man had been working every day since the first inception of the strike, and he could not be terrorized into stopping his work, and I felt that he was being railroaded into jail for that purpose.

Q. Do you not recognize the probability of even you and your best citizens being misled by wrong information?

A. Most unquestionably so.

Q. Now, then, you had information that he was unjustly treated in your local court?

A. I heard so.

Q. That was before Esquire Hile?

A. No, sir; before Clifft.

Q. An old gentleman that has lived in that country many, many years?

A. Yes, sir.

Q. And considered one of the best citizens of that country?

A. I suppose he is.

Q. And yet the information as it reached you, repeated no telling how many times, was that the man had been very unjustly treated in this court?

81 A. That he had received no fair trial.

Q. If you had been present you might have found conditions quite different. We have the fact that Squire Cliff is one of the best citizens of Sebastian county and a reputable gentleman, conceded to be as honest a gentleman as God ever made a man.

A. I have no reason to doubt it.

Q. Have you any personal knowledge of any violence offered to any of your employees?

A. Direct personal knowledge.

Q. Yes.

A. Not direct personal knowledge. I never saw anybody assault my employees.

Q. I recognize we are left, of course, to these flying reports. The causes of the excitement is what we are after.

(No response.)

Redirect examination.

By Mr. B. R. DAVIDSON:

Q. Just explain the thirteenth item there of their demand (handing witness demand of miners' organization); that wasn't explained in your testimony. Explain the effect of it. Read it first, please.

A. It reads, "13. The operators of this district shall grant the check-off system."

Q. Explain what is meant by that and what the effect of it is.

A. In what light do you mean?

Q. I mean what the check-off system is—the court does not understand mining terms—what the workings of that system are.

A. The check-off system, as I understand it, is this: that if a miner subscribes a portion of his earnings for any purpose whatever the amount shall be deducted out of his earnings and placed to the credit on the books of the company of some person denominated by the organization, who will be entitled to draw that amount and use it for the purposes for which it is subscribed.

82 Q. It makes the mining company become the book-keeper of the party and of the strike and requires it to appropriate the money?

A. Let me explain it this way: For instance, the miners almost invariably employ check weighmen to see their coal is weighed and credited correctly. The way the miners pay these check weighmen is to give him authority to deduct from their earnings a certain amount of the coal produced and credit it to himself. In that way he practically becomes an employee of the company so far as his credits and debits are concerned, because he appears on the books of the company just the same as the miners and he draws his pay on pay-day just the same as the employee does. If a man would get hurt in the mines and the miners felt like subscribing to his assistance, the amount each man subscribes would be charged to his earnings and credited to this man on the books of the company, so that he could draw on that amount or receive it on the day of settlement just the same as if he had been working in the mines and had produced so much coal and had worked so many days and had so much placed to his credit. That is what I understand to be the check-off system; and suppose, for instance, that the miners of the Kansas & Texas Coal Company were on a strike in Missouri or in the Territory or in Kansas, and the miners working for the Kansas & Texas Coal Company down in Arkansas, say, felt disposed to contribute a part of their earnings towards their assistance while they were out on a strike; by this check-off system the Kansas & Texas Coal Company would become the agents for collecting the money for the assistance of the men who were striking in their employment in other portions of the country—that is to say, they would be collecting the money from the men and turning it over to a committee, who would then sent it to the miners who were on a strike in another State, or for any other purpose whatever. If the miners sent a delegate to a convention and they wanted to pursue this method of collecting his wages and his expenses, that amount would be charged to the men and credited to him just in the same way. That is what I understand to be the check-off system.

83 Recross-examination.

By the PROS. ATT'Y:

Q. Is it not a fact that the check-off system prevails in these other mining States you have named?

A. Not to my personal knowledge; no, sir. It may.

The COURT: What would there be to prevent them? If they

wanted to contribute to a certain thing as an organization, why could not they contribute and keep their own books?

The WITNESS: I ask the reason why myself; why instead of going through the company with this concern they do not attend to their own business and collect their own money for this. It conveys to me a suspicion of their honesty that after subscribing they might not pay.

The COURT: Of course, that is just a matter of opinion.

Mr. B. R. DAVIDSON (counsel for St. L. & S. F. R. R. Co.): It is a matter of very great inconvenience to the company.

The PROS. ATT'Y: Do the miners pay their store bills or do you appropriate the check-off system when it comes to that?

A. Appropriate it, if you call it by that term. (Laughter.)

Q. So you adopt it when it suits you and you don't when it does not?

A. I beg your pardon. For any reasonable or honorable purpose we never refuse to do what the men ask us in that way.

Q. I say appropriate, because that is the word, I suppose, when it is not done by mutual consent.

A. We both understand each other.

(Whereupon this witness, BENNETT BROWN, was again excused and other witnesses examined, after which he was recalled and further testified as follows, to wit:)

Redirect examination.

By Mr. Jos. M. HILL:

Q. There are several affidavits here about the guns that are down there. I believe you testified in your direct examination about the the number of guns there, did you not?

84 A. Yes, sir.

Q. I believe the question was asked you if you had brought in any guns, and you said you did. How many did you bring in?

A. We brought in eight guns from Fort Smith and we had two guns in the office.

Q. This box of guns that was referred to in the affidavits as being at the depot on Saturday, are those the guns included in those you stated to the court were at the mine?

A. No; I think they came in on Friday.

Q. This affidavit has it Saturday, I believe. The box of guns was the other guns referred to?

A. Yes, sir.

Q. You have already made a statement about what you said to Peter Zrossig on the cannon business?

A. Yes, sir.

Q. Here is the affidavit of Sol. Lodge, which states: "On last Saturday night he saw B. R. Brown, supt. of the K. & T. Coal Co., and the cashier of the same, together with two other men, going west in the direction of the camp where the K. & T. Coal Co. have the imported

negroes, and were carrying guns, and said Sol. Lodge further states," etc. What are the facts about that?

A. It is absolutely true, with the exception of Brown carrying a gun. He had another man carrying it for him.

Q. Here is the affidavit of George A. Hutchinson, who states: "On the night of the 24th of April, 1899, while going home about 9 o'clock, he was held up by an armed guard of the K. & T. Coal Company, who stated he was an officer and inquired where I was going, and he presented his gun, but did not point it directly at me. I further state that I know of no striking miners carrying arms." Do you know anything about the facts stated there?

A. I know nothing about the facts in the case, but I am prepared to say that it is absolutely without any foundation at all. The K. & T. Coal Company have nobody representing officers, and they do not have men in town. They have men out at the mine. That is the only place they have men.

Q. If any one held him up, as he stated here, it was not an employee of the K. & T. Coal Company?

85 A. It was not; no, sir.

—. Here is the affidavit of J. N. Roberts, who states that "on last Saturday morning he had started to George Robinson's, and was walking up the said railroad and came to a trestle, and was going to cross it, and was stopped by A. B. Brown, supt. of the K. & T. Coal Co., who told him not to cross. I first thought he was joking, and told him I was going to cross. He told me if I undertook to go by he would kick me off in the creek. So I turned back. That was before any injunction notices were posted. I had been in the habit of traveling that way. Mr. Brown told me the union men had no business on that side of the creek. His conduct was very rude and insulting." I wish you would state what facts there are to justify that, if any.

A. What day was that on?

Q. He says on last Saturday.

A. Well, if it is necessary to satisfy the court, I could prove an alibi—that I wasn't there Saturday at all; but the whole thing is an absolute fabrication, without a coloring of fact.

Q. Did you use any such expression as that there was no union men had business on that side of the creek?

A. I never use the word "union" men at all in talking over the affairs of this strike.

Q. Was this trestle referred to there on the ground of the K. & T. Coal Co.?

A. It is.

Q. I believe you have heretofore explained that the company instructed the men not to go on the grounds over there where these men are, and you tried to keep them out of there?

A. I have said that owing to the threats that had been made and the feeling that existed, that in order to preserve the peace it was necessary that the two parties, if you might call them by that name, should not mingle together.

Q. And you tried to keep the people away from them?

A. Yes; I tried to keep them away from around that pit where those men are located.

86 Q. Here is the affidavit of one Davis, who states: "Last Saturday he and his wife were out fishing and were near the K. & T. trestle * * * and Supt. A. B. Brown, of the K. & T. Coal Co., was there, and he asked me where I was going, and I told him I was going across the creek, and he told me I was not and told me I would not be allowed to cross—that the union men had no business on the company's property on that side of the creek. This was before there was any injunction notice posted. He was in an ill humor." What do you know about that?

A. I could not be in an ill humor on the Sabbath day. That is not possible.

Q. I believe he said this was on Saturday. I read it wrong.

A. That is on Sunday that that man refers to. I remember the instance. He was crossing the creek, he and his wife and mother or wife's mother, and I walked very quietly up to him, and in as gentlemanly a way as I could, for I hope I will never be accused of insulting a woman or a man in the presence of a woman, and told him the condition of affairs, and that I thought under the circumstances it was better that this not be used as a thoroughfare until this trouble was settled. I didn't put him off his course at all, but simply asked him, in the future, if he had any business in this direction, to try to select another route to conduct him, and, so far as being in an ill humor or using any ungentlemanly words to that man, I can say, with a clear conscience, that I never did, and "union men" was never mentioned. The word "union" was never mentioned by Brown.

Q. There are a good many other things in these affiidavits, but I believe you have covered them generally in your direct testimony, and I do not care to repeat anything.

A. It is not necessary. I do not believe that the court takes Mr. Brown for a fool.

Q. Now, Mr. Brown, here is a letter that is supposed to have been sent to that lady down there. Was that furnished to you as a copy of a letter that was sent to her?

A. No, sir; it was furnished as the original of the letter that was sent to her. It was brought to me by another gentleman, who was boarding with her.

87 Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): Without taking up the time to read it, I just ask to introduce that in evidence. It is this letter from the Rough Rider of the West that has been referred to here.

The WITNESS: That is the only time that I was guilty of any threats of violence. I said when I got that letter that I wasn't a fighting man, but I was prepared to lick the stuffing out of any man that would write such a letter to any woman, and I say so now.

Recross-examination.

By the PROS. ATT'Y:

Q. Do you know a man by the name of Hutchinson, living out north of Huntington—a tall, large man, a farmer?

A. Not by name; I might know him by seeing him.

Q. I wanted to inquire whether that farmer was this Hutchinson who made the affidavit? I don't know myself whether he is or not.

A. I don't know, but on Sunday morning there was a large man, stout man, came from the north down the switch leading to 53, and I met him on the switch, and I sat down and discussed the question for fully half an hour, and I explained to him the reason why that I didn't want that to be made a public thoroughfare, in the way any two men would meet and quietly talk over the matter; but this man told me, in the course of our conversation, if I understood him right, that he was either a fireman for the Prairie Creek Coal Company or was firing shots for the Prairie Creek Coal Company.

Q. I suspect that is the man, then. Now, in passing towards Prairie Creek Coal Company, you would have to pass by one of your mines, would you not? Which one?

A. He would necessarily, in going to town, if he would not go a long way out of the way, pass near to 51.

Q. You had guards at 51, didn't you?

A. No, sir; not a guard.

Q. You had not?

A. No, sir.

Q. And if any of the persons that you had armed, or supposed to be armed, at specified times, as directed, for guarding purposes, happened to be out at places that you hadn't stationed them, you, of course, don't know it?

88 A. I don't know it, but they were not instructed by me to go to these places. They were instructed by me to stay right where they were stationed.

Q. Anybody that you had stationed anywhere with arms for a specified purpose, of course, were not instructed to make mistakes and hold up anybody that wasn't infringing upon your rights?

A. Certainly not.

Q. Of course not. I appreciate that.

(Witness excused.)

89 *Answer.*

In the United States Circuit Court for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS at the Relation of Jo. JOHNSON, Prosecuting Attorney, Plaintiff,
vs.
KANSAS & TEXAS COAL COMPANY and ST. LOUIS & SAN Francisco Railroad Company, Defendants.
} Answer.

Come the Kansas & Texas Coal Company and the St. Louis & San Francisco Railroad Company and for further answer hereunto state:

1. That the complaint does not state facts sufficient to constitute a cause of action.

2. That it is true, as alleged, that the defendant railroad company is a corporation organized under the laws of the State of Missouri, owning and operating a line of railroad in the 12th judicial circuit of Arkansas and in Sebastian county; and it is true that the defendant coal company is a corporation organized under the laws of the State of Missouri, owning and operating a coal mine in the town of Huntington, Greenwood district of Sebastian county.

That it is not true, as alleged, that there is a high state of excitement and hot condition of blood prevailing, even now or at the time when the allegations were made, between the striking miners and their sympathizers on the one side and the coal company and its employees on the other; that all the excitement and hot blood existing was existing on the part of the striking miners and their sympathizers, which was engendered by the action of said striking miners and their sympathizers attempting to interfere with the management and control of the defendant coal company's business.

That it is true that the coal company was to import into the State, county, and town of Huntington, over the line of said railroad, a large number of miners, but it is not true that they were armed men, nor is it true that they were of the low and lawless type of humanity, nor is it true that these miners endangered the public peace, morals, or good health of the town of Huntington or the county of Sebastian.

That it is not true that the action of the defendant coal company would become a great public nuisance and would destroy the peace and morals and good health of said town and county and would lead to riot and bloodshed and to the dissemination of contagious and infectious diseases; that if the action of the defendants would destroy the peace of said community, it would be because the relator, as prosecuting attorney, the sheriff, and other peace officers of the State of Arkansas and county of Sebastian, failed to do their duty in suppressing riots and disorders.

That if there were any violation of the criminal laws of the State of Arkansas threatened on account of the importation of miners by the

defendant coal company, it was the duty of the relator, as prosecuting attorney, and the sheriff and other peace officers of the county of Sebastian to prevent the same, which they could easily do, and that such threatened violation of the criminal laws was not threatened on the part of either of these defendants, nor of their employees, nor of their imported miners, but said threatened violation of the law was wholly and entirely by and from the striking miners and their sympathizers, and the action of the State should have been to prevent the violation of the laws by them, and if the State saw proper to obtain an injunction against any one, it should have obtained said injunction against said striking miners, who were threatening to violate the criminal laws of the State, and not against these defendants, nor their employees, nor the imported miners, who were not threatening nor purposed or intended to violate any of the laws of the State of Arkansas.

That the said coal company in the due performance of its business found it necessary to bring miners from other States to operate its mines in Sebastian county; that said miners were citizens of the United States and came at the solicitation of the said coal company to work in its mines in Sebastian county.

91 That the defendant railroad company is a common carrier, transporting passengers for hire over its line of railroad running into and through the States of Arkansas, Missouri, Kansas, Texas, and the Territory of Oklahoma and the Indian Territory; that as such common carrier it was engaged in interstate commerce, and while thus engaged in interstate commerce it was solicited by the defendant coal company to carry over its line from the States of Missouri and Kansas various and divers citizens of the United States who sought to go from said States of Missouri and Kansas to the town of Huntington, in the State of Arkansas, over the line of said defendant railroad company; that said defendant coal company contracted with various and divers miners in other States than Arkansas, said miners with whom it contracted being citizens of the United States, for them to come to the town of Huntington and work in the mines of said coal company, and pursuant to such contracts it did bring in over the line of the defendant railroad various and divers miners from the State of Iowa and other States, and at the time of the institution of this suit were intending to bring to said town of Huntington various and divers other citizens from other States than Arkansas, over the line of the defendant railroad company, said miners being brought over said line through the States of Missouri and Arkansas to said mines at Huntington.

That the injunction granted pursuant to the prayer of the complainant herein violates the Constitution and laws of the United States and the 14th amendment thereto, in that it deprives citizens of other States of the rights, privileges, and immunities enjoyed by the citizens of the State of Arkansas, and it violates the Constitution of the United States and the 14th amendment thereof, in that it prevents citizens of the United States from their lawful pursuit of happiness; that the said injunction granted pursuant to the allegations

of the complaint is an interference with the interstate commerce of the defendant railroad and the defendant coal company.

That said defendant coal company is engaged in producing
92 coal to supply to said defendant railroad and other corporations and citizens of other States with whom it has contracted to furnish coal, and said injunction issued pursuant to the allegations of the complaint interferes with and conflicts with its right to carry out its contract with said defendant railroad and other corporations and other citizens of other States, in that it interferes with its business, interferes with its contracts, and interferes with its right to lawfully pursue its business.

That this said injunction granted pursuant to the prayer of the complainant deprives the defendants of their property without due process of law, in that it prevents the defendants from properly carrying on their respective lines of business according to their right to engage in their respective lines of business.

Wherefore, the premises considered, these defendants pray that said injunction be dissolved and that this action be dismissed and that defendants recover their costs and all other and further relief which in equity and good conscience they are entitled to receive.

B. R. DAVIDSON &
HILL & BRIZZOLARA,
Att'ys for Defendants.

(Endorsed on back:) Filed in open court July 31st, 1899. Thomas Boles, clerk of the court.

93 *Motion to Restrain.*

In the United States Circuit Court for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS at the Relation of Jo. JOHNSON, Prosecuting Attorney, Plaintiff,
vs.
KANSAS & TEXAS COAL COMPANY & ST. LOUIS & SAN FRANCISCO Railroad Company, Defendants.

Come the defendants herein, The Kansas & Texas Coal Company and The St. Louis & San Francisco Railroad Company, and move the court that it issue a restraining order restraining Jo. Johnson, his agents, attorneys, representatives, from in any manner or way prosecuting or causing to be prosecuted or taking any steps in, toward, or about the prosecution or continuation of the cause of The State of Arkansas at the relation of Jo. Johnson, prosecuting attorney, *vs.* Kansas & Texas Coal Company and St. Louis & San Francisco Railroad Co., in Sebastian circuit court for the Greenwood district, State of Arkansas, and for cause thereof say:

That on the 23rd day of April, 1899, said cause was filed in said court and summons in equity issued and was served upon defendants, returnable to the September, 1899, term of said court.

That on the 18th day of July, being a day of the said Sebastian circuit court for the Greenwood district, said court then being in session, these defendants presented their bond and petition for removal of said cause to this honorable court; that said bond and petition were in due form and set forth good and sufficient grounds for the removal of said cause to this honorable court.

That the said Sebastian circuit court for the Greenwood district did upon said day deny the petition for the removal of said cause to this court; to which action of said court these defendants at the time excepted; that thereafter, to wit, on the 25th day of July, these defendants caused a certified copy of the record and of all the pleadings and the papers in said cause to be filed in this honorable court.

94 That upon the 26th day of July, the same being a day of the said Sebastian circuit court for the Greenwood district, these defendants caused to be filed in open court a motion that the action then pending in said court be dismissed for want of jurisdiction, and set forth as the grounds of the motion the said removal of said cause to this court and filing of the transcript herein; that the said court overruled said motion and denied the same and held that it, the said Sebastian circuit court for the Greenwood district, had jurisdiction of said cause, and that the same had not been removed to this court.

That the purpose and intention of the relator, Jo. Johnson, prosecuting attorney of the 12th judicial circuit, is to continue to prosecute said cause in the said Sebastian circuit court for the Greenwood district; that the prosecution of the same in said court might involve proceedings for contempt of said court and might involve the defendants and their employees in vexatious litigation, and said Sebastian circuit court for the Greenwood district is totally without jurisdiction of said cause, and such proceedings as might be had therein would be *coram non judice* and void, and be vexatious and annoying to these defendants and cause them and their employees trouble, inconvenience, and unnecessary litigation.

Wherefore, the premises considered, these defendants pray that Jo. Johnson, relator in said suit, his agents, attorneys, and representatives, be enjoined and restrained from in any manner, form, or way prosecuting or continuing to prosecute said suit, or any contempt proceedings therein or any other matters and things relating to the same in said Sebastian circuit court for the Greenwood district.

HILL & BRIZZOLARA,
Att'ys for Def'ts.

(Endorsed on back:) Filed in open court July 31st, 1899. Thomas Boles, clerk of the court.

95 *Motion to Dismiss.*

In the Circuit Court of the United States for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS, Plaintiff,
vs.
KANSAS & TEXAS COAL CO. ET AL., Defendants. } No. 121. Equity.

Comes the plaintiff, by her attorney, Ben T. Du Val, and moves the court to dismiss this case and strike the same from the docket for the following reasons:

First. Because the petition for removal and transcript of the record of the circuit court of Sebastian county for the Greenwood district thereof show that it is not removable to this court under the laws of the United States.

Second. Because the State of Arkansas being plaintiff and defendants alleged to be citizens of the State of Missouri, this court could acquire no jurisdiction of the grounds of diverse citizenship.

Third. Because the record aforesaid shows that it is not a civil action for the enforcement of a right arising under the Constitution and laws of the United States or treaties made under their authority or arose under the Constitution, laws, and treaties aforesaid.

Fourth. Because under the constitution and laws of the State of Arkansas The St. Louis & San Francisco Railway Company, one of the defendants, is a domestic corporation and is subject to the jurisdiction of the courts of said State.

Wherefore the plaintiff says that this court has no jurisdiction to hear and determine the matters in controversy herein.

BEN. T. DU VAL,
Att'y for State of Arkansas.

(Endorsed on back:) Filed Aug. 7, 1899. Thomas Boles, clerk, by Florence Hammersly, D. C.

96 *Motion to Dissolve Injunction.*

In the Circuit Court of the United States for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS at the Relation of Jo. JOHNSON, Prosecuting Attorney, Plaintiff,
vs.
KANSAS & TEXAS COAL COMPANY and ST. LOUIS & SAN FRANCISCO Railroad Company, Defendants.

Come the defendants, Kansas & Texas Coal Company and The St. Louis & San Francisco Railroad Company, and move the court to dissolve the injunction heretofore granted in this action by the judge of the Sebastian circuit court for the Greenwood district, and for cause thereof say:

1. That upon plaintiff's complaint and affidavits alone the plaintiff has no cause of action for the injunction as granted by said judge.

2. The said defendants move to dissolve said injunction upon the whole case, and for cause thereof say that there were no facts existing at the time of the granting of the injunction, nor since that time, justifying the allegations of the complaint or justifying the action of the judge in issuing said injunction.

HILL & BRIZZOLARA,
Att'ys for Def'ts.

(Endorsed on back:) Filed in open court July 31st, 1899. Thomas Boles, clerk of the court.

97 *Motion to Postpone.*

In the United States Circuit Court for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS, Plaintiff, vs. KANSAS & TEXAS COAL COMPANY ET AL., Defendants.	Motion for a Full Bench.

Comes the said plaintiff, by her attorney, and moves the court to postpone the further examination and trial of this cause until there is a full bench of judges, because the determination of the case is of great interest to the plaintiff and the citizens thereof, and presents questions affecting their rights to such an extent as to make it desirable that the decision when made should inspire confidence.

There is a good deal of feeling and interest prevailing in the western part of the State, and the decision of this case creates much anxiety.

Therefore the State of Arkansas respectfully requests the judge presiding in this court to make an effort to procure the attendance of his associate judges at as early a date as possible, and that the whole cause, including the motion to remand, be reserved for the decision of the full court.

BEN. T. DU VAL,
Attorney for the State of Arkansas.

(Endorsed on back:) Filed in open court Aug. 9, 1899. Thomas Boles, clerk, by Florence Hammersly, D. C.

98 *Motion to Postpone.*

In the Circuit Court of the United States for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS, Plaintiff,
vs.
KANSAS & TEXAS COAL CO. ET AL., Def'ts.

Comes Ben. T. Du Val, attorney for the plaintiff, and says that he is not prepared to proceed in the trial of the motion to dissolve the injunction granted by Hon. S. T. Rowe, judge of the 12th judicial circuit in the State of Arkansas, in this cause:

First. Because when he proposed to take up the matter before this court arising upon the motions he believed that the motion to dissolve would be based upon the record and papers and that no oral testimony would be introduced.

Second. Because he believed the question of the jurisdiction of this court would first be decided before the other motions would be taken up, and hence now State is not prepared with witnesses at this time; that he was not employed as attorney in this cause until July 31, 1899, and had no previous connection with it as attorney and has not had time to prepare the case on the facts.

Third. Because the decision of the motion to dissolve will virtually dispose of the whole case, and under the laws providing for removal of causes from State courts to this court this case would stand for trial at the next term.

Fourth. Because he has requested the court to reserve this cause for trial until an opportunity is afforded to procure the attendance and presence of the other judges which will afford time for preparation in case the cause is not removed.

BEN. T. DU VAL,
Att'y for Plaintiff.

Ben. T. Du Val says he believes the statements in the foregoing motion to be true.

BEN. T. DU VAL.

Sworn to in open court Aug. 9, 1899.
[SEAL.]
THOS. BOLES,
By H. B. ARMISTEAD,
Dep. Ct. Cl'k.

(Endorsed:) Filed in open ct. Aug. 9, 1899. Thomas Boles, cl'k, by Florence Hammersly, D. C.

99 *Replication.*

In the Circuit Court of the United States for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS, Complainant,
vs.
KANSAS & TEXAS COAL COMPANY and ST. LOUIS & San Francisco Railroad Company, Defendants. } Replication.

This repliant, The State of Arkansas, saving and reserving all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto saith that she doth and will aver, maintain, and prove her bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in law to be replied unto by this repliant; without th*at*, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

BEN. T. DU VAL,
Solicitor for Complainant.

(Endorsed on back:) Filed in open court Sept. 14, 1899. Thomas Boles, clerk, by Florence Hammersly, D. C.

100 In the United States District Court for the Western District of Arkansas.

AUGUST 9, 1899.

W. L. WARNER, being first duly sworn, testified as follows:

Q. Your name is W. L. Warner?
A. Yes, sir.
Q. You are the deputy sheriff of Sebastian county?
A. Yes, sir.
Q. Do you remember going down to the train about a month or two ago when some miners were brought into this county by the Kansas & Texas Coal Company and of seeing those men?
A. Yes, sir.
Q. Do you remember the date, Mr. Warner?
A. No, sir; I don't. I made no note of it and don't think I remember.
Q. About when was it?
A. It strikes me that it was some time in May.
Q. May or June, was it not?

A. I think it must have been the latter part of May, as well as I remember; I am not positive.
Q. Where were the men when you saw them?
A. On the train.
Q. The St. Louis & San Francisco train?
A. Yes, sir.
Q. Do you know where they came from?
A. I don't know that I do.
Q. They were brought in on the Cannon Ball which arrives here from St. Louis, were they not?
A. Yes, sir. I don't know whether they came from Alabama or Tennessee. It strikes me it was one or the other of those places.
Q. That is, the men told you it was one of those States?
A. Yes, sir; that's my impression.
Q. At any rate, they came in on the Cannon Ball?
A. Yes, sir.
Q. Did you go in and look at those men and talk to them?
A. Yes, sir; I did.
Q. How many were there, do you remember, Mr. Warner?
A. I think there was twenty-seven.
Q. White men?
A. Well, there was one negro in the coach I went in;
101 whether I counted that one in with the 27, I don't remember, but there were either 26 or 27 whites.
Q. Were the men armed?
A. If they were I didn't see anything of that kind.
Q. You looked for that purpose, didn't you? That is, for the purpose of ascertaining that?
A. Yes, sir.
Q. Were any of them infected with any contagious or infectious diseases that you could discover?
A. No, sir.
Q. Did you look to see?
A. Yes, sir.
Q. Did they appear to be an average healthy-looking set of men?
A. Yes, sir; they did.
Q. Did they bear the appearance of being of a very low and depraved type of humanity?
A. I was not so impressed.
Q. How were you impressed?
A. I was impressed that they were a fair class of men.
Q. Did you learn where they were going to?
A. They were going to Huntington.
Q. For what purpose?
A. For the purpose of engaging in mine-work.
Q. Of the Kansas & Texas Coal Company?
A. Yes, sir; that is what they told me.
Q. They were coal miners, were they not?
A. Yes, sir.
Q. Told you that they were?
A. Yes, sir.

Cross-examination.

By Col. B. T. Du Val:

Q. Where did you say they were going?
A. To Huntington, they told me.
Q. You say they were all white but one in that coach?
A. There was one negro sitting back in the coach, and I asked him where he was going, and he said to Huntington, and I asked him if he was one of the miners and he said he was.
Q. At whose instance did you make that inspection?
A. At the instance of Mr. Hill and Mr. Brown.
Q. For what purpose?
A. For the purpose, as he explained it to me, to see whether they were infected with any of those diseases—that is, the best I could. I am not a judge; I only could judge from their general appearance, and that I told them.
102 Q. Did you inspect them as to their health?
A. No, sir; I never examined them; only judged from their general appearance.
Q. You are not a physician, are you?
A. No, sir.
Q. All you did was to make a casual examination in the coach?
A. That's all, Colonel.
Q. And that was done at the instance of the supt. of the Kansas & Texas Coal Company and his attorneys?
A. Yes, sir.
Q. Do you know what became of these miners?
A. No, sir; I don't.
Q. Did you ever see any of them afterwards?
A. Never did that I know of.
Q. Do you know whether they are at the Huntington mines now or not?
A. No, sir; I don't.
Q. That's all.

Redirect examination.

By Mr. Hill:

Q. When you were requested to make this inspection I will ask you if your attention was not specifically directed to Judge Rowe's injunction?
A. It was.
Q. And you were requested to see whether any of these men fell within the prohibited class of this injunction?
A. Yes, sir.
Q. That was the purpose of your visit there?
A. Yes, sir.
Q. At the request of the attorneys and superintendent of the Kansas & Texas Coal Company?
A. Yes, sir. If you remember, I told you I was not a physician

and could only tell by their appearance, and that their appearance was that of healthy men.

Q. You were further advised by the attorneys of the coal company that if you thought it wise to do so we would be glad if you would take a member of the board of health there with you?

A. Yes, sir; that was spoken of.

Q. That's all.

103 BENNETT BROWN, being first duly sworn, testified as follows:

Q. Your name is Bennett Brown?

A. Yes, sir.

Q. What position do you hold with the Kansas & Texas Coal Company, Mr. Brown?

A. Superintendent at Huntington.

Q. Were you, during the months of March, April, May, June, July, and so far in August, local superintendent of the mines at Huntington?

A. I was.

Q. Prior to April 23, in the year 1899, did the Kansas & Texas Coal Company import into the town of Huntington any miners?

A. They brought into Huntington prior to the 23rd day of April sixteen miners.

Q. About when were they brought in?

A. About the 20th.

Q. Prior to that importation, had any been imported by the company this year?

A. Not this year that I remember.

Q. I wish you would state to the court the general character of those men who were imported prior to the 23rd day of April.

A. So far as I know, their character was good.

Q. What were they?

A. Colored men.

Q. Miners?

A. Yes, sir.

Q. Practical miners?

A. Yes, sir.

Q. Where did they come from?

A. Iowa.

Q. For what purpose did they come to Huntington?

A. To mine coal.

Q. Was any contract made with them before they came to Huntington that they were to come there and mine coal?

A. If you might call it a contract to engage a man's services for that purpose, then there was a contract made.

Q. That's a pretty good definition of a contract, I think, Mr. Brown. Their services were engaged in Iowa to come to Huntington to mine coal there?

A. Yes, sir.

Q. Those were the facts?

A. Yes, sir.

Q. How were they brought to Huntington—over what line of road?
A. Over the Frisco road.
Q. By that you mean the St. L. & San Francisco R. R.?
A. Yes, sir.
Q. Brought from the State of Iowa over that road?
A. They come — St. Louis on their way from Iowa over that road.
104 Q. Were those men armed when they came to Huntington?
A. Not to my knowledge.
Q. Did you see them?
A. I did.
Q. Where did you meet them?
A. *St.* Fort Smith here.
Q. Went from Fort Smith to Huntington with them?
A. I did.
Q. If they had been armed you would have had an opportunity of discovering it, would you not?
A. They didn't have any arms.
Q. You know that?
A. Yes, sir; I know that.
Q. Were they infected with contagious or infectious diseases?
A. Not to my knowledge.
Q. They live there at Huntington, don't they?
A. Yes, sir.
Q. Any diseases spring from their ingress into the town?
A. No, sir.
Q. They mingled with the people in the town?
A. Not to any great extent.
Q. They mingled with the other miners?
A. Yes, sir.
Q. Did any diseases follow their ingress among them?
A. No, sir; not to my knowledge.
Q. Were these men of the low and lawless type of humanity?
A. Not any more so than I am.
Q. I am not taking judicial cognizance of what you are.
A. They were men who worked for their living, just as I do, and conducted themselves properly as long as they were employed.
Q. Came there to work and did work?
A. Yes, sir.
Q. And behaved themselves?
A. Yes, sir.
Q. Some of them there now?
A. Yes, sir.
Q. Some of them testified in contempt cases in this court, didn't they?
A. Yes, sir.
Q. Do you remember who they were?
A. I don't believe I remember their names. I think Dave Kefford was one of them.
Q. Was not that negro, Harrison, one of them also?

A. No, sir; he came from the Jellico district—from Tennessee. He came later.

Q. On the 23rd day of April was it the purpose and intention of the Kansas & Texas Coal Company to import and bring into Huntington a large number of armed men of the low and lawless type of humanity?

A. Not to my knowledge.

Q. You would have had knowledge of that fact if it existed on the part of the company?

A. Doubtless I would.

Q. Was it the purpose of the company at that time to import men here?

105 A. It was.

Q. For what purpose?

A. To mine coal.

Q. What class of men was it their purpose and intention to import here?

A. Able-bodied workmen and experienced miners.

Q. Was it the intention or purpose to arm those men and bring them into the State of Arkansas as armed men?

A. It was not.

Q. Was there any action taken on the part of the coal company to see that the men did not come armed?

A. I do not know that there was any special efforts made upon the part of the company to see that they did not come in armed, because the presumption would be that the men would not have any arms to begin with.

Q. You didn't expect that they would be armed?

A. Certainly not.

Q. And it was no part of the business or intention of the company to arm them?

A. Not any.

Q. Was it the purpose and intention of the company to bring in any men afflicted with contagious and infectious diseases or from places where contagious and infectious diseases were prevailing?

A. Certainly not.

Q. After that day, April 23rd, has your company imported men into Huntington?

A. It has.

Q. Can you estimate about what number?

A. I believe the total number it has imported since that time is between 200 and 250.

Q. That is, from the 23rd of April up to the present time?

A. Yes, sir.

Q. What has been the general character of the men that have been imported?

A. Fair average workingmen.

Q. Have they been armed?

A. No.

Q. Have they been of a low type of humanity?

A. Not to my knowledge.

Q. Have there been any of them infected with diseases that would cause the spread of contagious and infectious diseases in your community?

A. No, sir.

Q. They have been working?

A. Yes, sir.

Q. And came there to work and have worked?

A. Some of them have worked and some have not.

Q. How many have not worked?

A. Probably 25 per cent. of them have not worked any at all. Some have worked a little and some are working now.

Q. Without going into detail, can you state in general terms why 25 % of the men brought there did not work?

A. According to their own statement, they were afraid to work.

106 Q. They came there for the purpose of working, but were afraid on account of the strike situation?

A. Yes, sir.

Col. Du Val: He didn't say that. He said they were afraid.

Witness: When I mean they were afraid, there was a general impression conveyed to them that they were not safe from molestation and violence on the part of the men who were not at work and didn't want to work under the conditions.

Q. These men that have been brought in since the 23rd of April, have they been brought under like circumstances and conditions as to the prior engagement of their services as those that were brought before that date?

A. Just the same.

Q. Brought under agreement or contract with them made in other places to come to Huntington and mine coal?

A. Yes, sir; all of them have been engaged by agents of the company to come to Huntington to mine coal.

Q. Where were those men brough- from?

A. Various places.

Q. Were any brought from the State of Arkansas?

A. Very few. I believe I have taken one or two, or perhaps three, from Fort Smith.

Q. I mean this importation that came in on the train.

A. No, sir.

Q. These importations that I have been asking about have been from other States than Arkansas?

—. From other States; yes, sir.

Q. Were these men who were brought in citizens of the United States, or were they foreigners?

A. Principally citizens of the United States, and I should say country-born.

Q. Born in the United States and from various portions of the United States?

A. Yes, sir.

Q. None of these importations that have been made have been

from any other portions of Arkansas except the few men you have picked up in Fort Smith and took down?

A. No, sir.

Q. Have all of them that — been imported from other States been brought in there over the St. Louis & San Francisco road?

A. All of them; yes, sir.

Q. And have come into the State of Arkansas, having gotten on that road at some point without the State of Arkansas?

A. Yes, sir.

107 Cross-examination.

By Col. Du Val:

Q. You say that the company had no intention of introducing a class of persons referred to in the question of Mr. Hill? You stated that you knew the company had no intention of bringing in any such class of people as are spoken of in the injunction?

A. I said so; yes, sir.

Q. What are your means of knowing what the intentions of the company are?

A. My means of knowing what the intentions of the company are is because we want men in there who can perform service for the company in the way of mining coal, and those people enumerated in the injunction would be of no service to us whatever in that direction.

Q. Have there not been some people brought to that mine from outside of the State in other ways than by the St. Louis & San Francisco road?

A. Not any to my knowledge.

Q. Has there not been a body of men brought there to work in the mines by way of the Choctaw road across the country?

A. There never has been.

Q. You state that positively, do you?

A. Yes, sir; I state that positively.

Q. Now, when these men came here that you speak of, are they not put inside of a stockade?

A. There was never any stockade except in the imagination of our enemies.

Q. Was there not a high wire fence?

A. No, sir.

Q. When was it taken down?

A. It has never been taken down; it is there yet.

Q. How high is it?

A. 3 or 4 feet high.

Q. When you brought those men at first were they not armed by the company?

A. They were not armed by the company.

Q. None of them that have been brought there?

A. None of them at the time they were brought in.

Q. I mean after they got there at the mines, were not arms put in their hands?

A. In some instances there has been.

Q. How many?

A. I cannot say.

Q. Well, now, as to those first sixteen, you testified that they were peaceable and industrious. I will ask you if while they were there one of them did not get his eye knocked out by another.

A. He had his eye injured in a fight with another.

108 Q. Do you know whether or not some of those men were ex-convicts from the penitentiary in some other States?

A. If they were it would not make any difference with me. A man could be in the penitentiary and make a perfectly good citizen afterwards.

Q. It is not generally the fact that they are good citizens afterwards?

A. I do not want to go into generalities, but I would not have any hesitancy about taking the hand of a man who had once been in the penitentiary if he conducted himself properly afterwards.

Q. That is your private opinion, but have you had much experience with men who had come out of the penitentiary and made good citizens afterwards?

A. I have not had much experience in that direction.

Q. I thought so, or you would not be so positive. You were present when Mr. Warner testified in regard to this lot of miners that he inspected in the cars down here at the depot, were you not?

A. Yes, sir.

Q. Are they at Huntington now?

A. Some of them are.

Q. How many remained there?

A. Four or five—five, I believe; four white and one colored.

Q. One of the 27?

A. Yes, sir.

Q. Did the others ever go to work?

A. Never went to work; no.

Q. And they were a better lot than you were in the habit of importing?

A. Didn't prove so to us.

Q. You say that because they didn't go to work; but in their appearance and general make-up they were rather above the ordinary standard?

A. Well, they were white.

A. I am not speaking of color. Were they not better than the others brought in?

A. Not any better.

Q. Then why did you take the sheriff down there to inspect that lot and not to inspect any others?

A. Do you mean in the train here? I thought you had reference to another matter. I beg your pardon. We took the sheriff down to the train to examine those men because I had pledged my word to the sheriff that I would not bring any men into Huntington without giving him an opportunity or his deputies to examine them and see that they did not come within the prohibited class specified

in the inunction. That is the reason we asked the sheriff to go down.

Q. Was any other lot inspected by the sheriff?

A. Not to my knowledge.

109 Q. Was he ever asked to inspect them?

A. I don't know that he was. The reason why the sheriff and his deputies were not asked is because the sheriff did not seem to take any interest in the matter—did not care whether he was asked or not, and took no interest in the matter.

Q. There was nothing obligatory upon you to ask him?

A. Only so far as my word was concerned.

Q. Then you gave him the opportunity, and after you did give him the opportunity he did not manifest any further interest?

—. No, sir; he did not. We telephoned him to come up from Greenwood and he did not do so, and took no steps in the matter, and I concluded that if he didn't care we didn't.

Q. And that's the only lot you gave him notice of?

A. Yes, sir; the only lot we gave him notice of.

Q. Do you know Albert Evans?

—. I do; he worked in the mines.

Q. What batch of laborers was he imported with?

A. Do you mean where did he come from?

Q. No; when did you bring him there?

A. We brought him with that other lot; I can't remember the date.

Q. After the 16 or 27 lot?

A. After the 27 lot.

Q. Do you know where he came from?

A. Down in Tennessee; what they call the Jellico district, I believe.

Q. Do you know whether he was an ex-convict or not?

A. I do not.

Q. Where is he now?

A. In jail.

Q. The city jail?

A. The county jail at Greenwood; that is the last place I heard of him being.

Q. What is he charged with?

A. Charged with assault with intent to kill.

Q. Upon whom?

A. Upon the city marshal of Huntington.

Q. That was one disorder that grew out of the bringing him there—one violation of the law?

A. I am not prepared to go that length.

Q. He is indicted, is he not?

A. Yes, sir; but many a man has been indicted when he was innocent.

Q. But all men who are indicted are not innocent, are they?

A. No, sir; and neither are all men that are indicted guilty.

Q. Are there any other of these persons you brought in there in the county jail?

110 A. I understand that a relation of his, cousin or brother-in-law, is in there, too.

Q. He is one of the miners imported since the 23rd of April?

A. Yes, sir.

Q. I will ask you if you know whether the general reputation of miners in this Jellico district is that of being ex-convicts and a bad class of men.

A. I know nothing whatever about it.

Q. You have never heard anything about it?

A. Oh, yes; I have heard a good deal about it here in the State court.

Q. Never heard from anywhere else?

A. No, sir.

Q. It is true that the agents of your company sent men there for the purpose of procuring miners?

A. That is a fact.

Q. You make no difference whether a man is a criminal or not or otherwise, so that they are healthy and able-bodied?

A. I cannot say what they do. I could testify to the instructions the agents get, but whether they follow the instructions or not I am not able to say.

Q. Who gives them the instructions?

A. The president of the company.

Q. Do they go through you?

A. No; not through me; they originally come from me.

Q. You suggest to the company the class of men you want?

A. Yes, sir.

Q. And who is it instructs the agents of the company where men can be procured? The question of their being honest or dishonest or convicts or ex-convicts is not one of the things that they are to guard against or inquire into?

A. Not particularly about being an ex-convict, but particularly about them being healthy and able-bodied men and men who are experienced and practical coal miners.

Q. That is all the instructions?

A. That's the general trend of the instructions.

Q. The question as to whether they are of the lowly class or whether they are immoral or dishonest is not a question for inquiry?

A. No; we don't particularly inquire into a man's honesty. We take it for granted that he is an honest man until we find out he is a thief.

Q. Now, this class of miners that I speak of, this Jellico District miners, ex-convicts, etc., do they make good miners?

A. Some of them do and some of them don't.

111 Q. Well, you have quite a number of them employed in the mines now, have you not?

A. Yes, sir; quite a number.

Q. How do they average?

A. Well, I would not say that they average up very well. As producers they are rather below the average. I might qualify that

statement by the fact that the men, a part of them, have not been physically able to work on account of ill health brought on by climatic changes, change of water, and things of that kind, affected with malarial trouble, and that has to some extent destroyed their capacity to work for the moment.

Q. How many miners have you now employed—about how many?

A. If the court will excuse me, I don't think that that is a proper question to ask me.

A. All right if he refuses to answer; I have no objection. He said he introduced about 200 to 250, and I wanted to know what per cent. of them remained. You said about 25 per cent. of them remained?

A. No, sir; I said that 25 per cent. of them never started to work.

Q. How many of them have quit?

A. I cannot say.

Q. I will ask you if there are not quite a number of these who have been imported who are anxious to get away.

A. They have never expressed themselves so to me.

Q. Have not a considerable number of them called on the company to furnish transportation back to where they came from; that they were not able to get off?

A. Yes, sir; one of these twenty-seven that came after he had gone away and worked on the railroad somewhere for two weeks came back and demanded that I give him transportation back to where he came from, and I told him to wait a little while and I would see about hiring a Pullman palace car to take him back. That is the only one who came to me for transportation; some came through Mr. Burke, their agent.

Q. How many did he represent that he was calling on you for aid to return?

A. I don't know that he specifically stated the number. He said that it was those white men that had been brought in that he was acting as agent for.

Q. They claimed that the company should furnish them transportation back to the place they came from?

A. Yes, sir; or back to Alabama or some other place.

112 Q. Did you get the Pullman palace car?

—. No, sir; I did not.

Q. And so none of them have been furnished by the company with means to get back where they came from?

A. They violated their obligation to the company and the company did not see that it was under any obligation to men who had violated their obligation to it; not a bit.

Q. I believe that's all.

Redirect examination:

By Mr. HILL:

Q. It is true two of your men are in jail under indictment? You are familiar with the facts growing out of that indictment against them, are you not?

A. Only what I heard in the court-room.

Q. From your knowledge and information of it, was your workmen the ones who violated the peace or was it the town marshal?

A. I would say it was the town marshal.

Q. I believe Col. Du Val asked you something about a man getting his eye hurt. Was that any lawless display of violence?

A. When one man's fist comes up against another one's eye I would consider that the natural result.

Q. It was a regular fisticuff fight, then?

A. Yes, sir.

Recross-examination.

By Col. DU VAL:

Q. The cases of these men in the jail there were investigated here, were they not?

A. Yes, sir.

Q. And they were remanded by the State court?

A. Yes, sir; but they were not indicted for the charge that was investigated in this court. The charge against them in this court was for resisting arrest and assault with intent to kill Mr. Bunch. I understand that they are indicted, not for resisting arrest—that charge was withdrawn—nor not for assault with intent to kill Bunch, but assault with intent to kill the town marshal.

Q. But it all grew out of the same transaction?

A. Yes, sir; but, you see, the charges were different.

—. ——.

A. Yes, sir.

113 Redirect examination:

Q. When you wanted the sheriff to inspect these men, or offered to the sheriff the opportunity to inspect them, did you not couple that with the request that he furnish protection to them, and that if he would furnish protection to the men you would import that you would notify him of the arrival of every man you brought in?

A. I did; yes, sir.

Q. And the first men you brought in you did notify him?

A. I did.

Q. And his deputies went there and inspected, but not under the sheriff's direction. That was at the request of yourself and your attorneys?

A. Yes, sir.

Q. And the sheriff failed to furnish you protection at the time,

didn't he, & you felt under no obligations to bother him further, so to speak?

A. Yes, sir; for the little interest that he took in the matter.

Recross-examination:

Q. Regarding this assault upon the town marshal, or this occurrence, were you present?

A. No, sir; I was not.

Q. Where were you at that time?

A. I think I must have been uptown in my office when that occurrence took place.

Q. That's all.

Witness excused.

Endorsed on back: Filed August 9th, 1899. Thomas Boles, clerk.

114 In the Sebastian Circuit Court for the Fort Smith District.

STATE OF ARKANSAS *ex Rel.* JO. JOHNSON, Prosecuting Attorney,
vs.
KANSAS & TEXAS COAL COMPANY and ST. LOUIS & SAN FRANCISCO Railroad Company.

Testimony of F. E. Doubleday.

Before his honor Styles T. Rowe, judge of the circuit court of the twelfth judicial circuit of Arkansas.

Appearances: For the State, Jo. Johnson, prosecuting attorney; J. S. Little, Edgar E. Bryant, Ben. T. Du Val; for the K. & T. Coal Co., Hill & Brizzolara; for the St. L. & S. F. R. R. Co., B. R. Davidson.

April 27, 1899.

115 F. E. DOUBLEDAY, having been duly sworn upon behalf of the Kansas & Texas Coal Company, was examined in chief by Mr. Jos. M. Hill and testified as follows, to wit:

Question. What is your name?

Answer. F. E. Doubleday.

Q. Where do you live?

A. Pittsburg, Kansas.

Q. What is your position with the Kansas & Texas Coal Company?

A. General superintendent.

Q. Does your duty as general superintendent require you to investigate the situation at the various mines of that company?

A. Yes, sir.

Q. You know of the strike, of course, having occurred the first of March at your mines in Huntington?

A. Yes, sir.

Q. Have you been there frequently since that time?
A. Yes, sir.
Q. Are you familiar with the situation there?
A. Fairly so.
Q. Endeavored as best you could to learn it, I suppose?
A. Yes, sir.
Q. Now, in your own way, just state the situation to the court, as you have understood it there, with regard to the men quitting, and your difficulty in getting labor to take their places in the mines and work the mines.
A. The miners in our company's employ at Huntington, they stopped work, I think, on the 28th of February, and the mines have been practically idle since that time. I suppose we have had at different times—I think nearly every day there have been some men at work. I don't know what the smallest force has been—probably six or eight men—and at this time, I suppose, there is in the neighborhood of thirty men at work.
Q. There has been an effort on the part of the company at all times to keep the mines running?
A. Yes; we attempted to get some coal.
116 Q. Have you had difficulty in retaining the men that you did have?
A. Yes, sir.
Q. What was your information as to the cause of that difficulty in retaining them?
A. My information, of course, is reports; it is nothing I have seen myself.
Q. I am just asking for your information on that.
A. That efforts have been made to stop the men that wanted to work; efforts have been made to prevent the men from working.
Q. And they have been, in the main, pretty successful in preventing them from working?
A. Yes, sir; there has been no large number at work.
Q. How many men does it require to work your mines down there to the full capacity?
A. Between 450 and 500 men.
Q. How many were you working on the first of March or prior to the first of March?
A. I should say in the neighborhood of 400.
Q. Since that time, I believe you say, forty or fifty or something like that have been all you have had?
A. I don't think we have had over thirty at one time.
Q. And that has been in the last few days?
A. Yes, sir.
Q. Prior to the time you imported these negro miners, how many was the most you ever had at work at any one time?
A. I think less than fifteen.
Q. Why did you find it necessary to bring any miners from a distance?
A. A large number of the miners that were at work in our mines

before the first of March had left Huntington, and those that were there did not report for work, and we wanted to produce some coal.

Q. You have been ready to take these miners at work—that is, your old miners at work—at all times, I presume?

A. Yes, sir.

117 Q. You are now?

A. Yes, sir.

Q. You were unable to get them, and then you sought labor elsewhere?

A. Yes, sir.

Q. Had you any purpose in seeking negro labor in preference to seeking white labor?

A. No, sir.

Q. Is there any reason why it is more difficult to get white labor under the circumstances than it is negro labor?

A. I don't know that there is any reason for it.

Q. Are those all you have been able to get—those you have now?

A. We have only taken, I think, about 16 or 17 down there.

Q. They were mostly negroes?

A. Yes, sir.

Q. Do you know whether the negroes, as a general thing, are union miners?

A. No; as a rule, I don't think *they* are as many among the negroes as there are among the white men.

Q. Therefore, in case of a strike you naturally get more negro miners, because there are more non-union miners among them?

A. Yes, sir.

Q. At Huntington, however, do you know whether the negroes belong to the union or not?

A. I understand that some of them do.

Q. When you got those miners here—you brought them in about a week ago I believe it has been shown?

A. Yes, sir.

Q. Did you see them?

A. Yes, sir.

Q. Where did you see them?

A. I saw them at Fort Smith first. I got on the train here. I saw them between here and Jenson.

Q. Did you explain the situation to them down there?

A. Yes, sir.

Q. You and Mr. Brown together?

A. Mr. Brown did.

118 Q. In your presence?

A. Yes, sir.

Q. Explained the situation exactly as it was?

A. Yes, sir.

Q. Were those men armed?

A. I think not.

Q. You saw no signs of it?

A. No, sir; I did not.

Q. You saw no signs of it?

A. No, sir; I did not.
Q. Did you have any reason to believe they were armed?
A. I did not.
Q. Were they in charge of any guards?
A. No, sir.
Q. Who was with them?
A. Mr. Jones, from North Missouri, a locomotive engineer in our company's employ there.
Q. What is he doing now? Is it his business to look after miners?
A. No, sir; he has returned to his home. I suppose he is running his locomotive.
Q. He was temporarily working for the company in this service?
A. Yes, sir.
Q. And brought them down?
A. Yes, sir.
Q. The men understood the situation when they went there, and went there voluntarily?
A. Yes, sir.
Q. They have been at work in the mines since?
A. It is my understanding they have. I have not been at Huntington for 2 or 3 days—that is, I have not been at the mines.
Q. Are they miners—men who have worked in the mines before?
A. Well, I think they have. I talked to some of them, and from the information—they told me the places they worked. Some of them told me they had worked in this company's mines at other places.
Q. You believed them and took them as *bona fide* miners?
119 A. Yes, sir.
Q. Were any of them affected with infectious or contagious diseases, to your knowledge?
A. No, sir; not to my knowledge.
Q. What would be the effect of the company introducing such a class of miners as that down there on your own interests?
A. It would be very disastrous.
Q. I suppose you would be very careful in guarding such a point as that?
A. We certainly would; yes, sir.
Q. I suppose it is very far from the intention of the company to do anything of that kind knowingly?
A. Yes, sir.
Q. Is it the intention of the company to gather up lawless men of a low type of humanity?
A. No, sir; it is not; on the other hand, we undertook to use extraordinary care in procuring men that will work.
Q. The purpose of working them in the mine is to get out coal?
A. Yes, sir.
Q. That is what you are after, to get the best men you can to do that work?
A. Yes, sir.

Q. Have you any other purpose except to get men to work these coal mines?

A. None whatever.

Q. Is it the purpose of the company to use its utmost efforts to get a full complement of men to work its mines?

A. Up to the number that is required to produce the coal that we have a sale for.

Q. What is the extent of the loss, if you could estimate it, of this stoppage of your mines at Huntington?

A. I can hardly estimate it, Mr. Hill.

Q. Has your company large contracts outstanding for supplying coal?

A. Yes, sir.

Q. What are you doing with those contracts?

A. We are not filling them.

120 Q. You are losing a large amount of business?

A. Yes, sir.

Q. Do you think that the loss in dollars and cents is great by this stoppage?

A. Yes, sir.

Q. Does it run into the thousands of dollars?

A. I should think so.

Q. And to avoid that situation it is the purpose of the company to get the men, if it can, to operate these mines?

A. Yes, sir.

Q. Has it any other purpose in view, to your knowledge?

A. No, sir.

Q. Other than to operate these mines and carry out its contract and produce the coal?

A. That is all.

Q. Were you with Mr. Brown or were you present at the time the request was made on the sheriff to give protection to your property and miners down there?

A. I was with Mr. Brown here in the court-house when he was talking with Mr. Herrell over the telephone.

Q. I do not care to go into the details with the matters with Mr. Herrell. I believe there is no misunderstanding between the gentlemen as to what took place. I just want to know if you know generally of a request made on the sheriff for protection.

A. Yes, sir.

Q. You regarded that protection as necessary to protect your men down there and your property, did you?

A. Yes, sir.

Q. Where were these threats coming from? From what source?

A. I suppose from the striking miners. None of them ever made any threats to me.

Q. That was your information?

A. Yes, sir.

Q. The object of these threats was to prevent the importation of other labor, was it not?

A. Yes, sir.

121 Q. That was your understanding of it?
A. Yes, sir.
Q. You intended to bring other miners here on Monday, I believe?
A. Yes, sir.
Q. Did you see these men that were coming here?
A. Yes, sir.
Q. Were they infected with any loathsome or contagious or infectious diseases?
A. I don't think they were.
Q. You saw them?
A. Yes, sir.
Q. Where did you see them?
A. At Monett, Missouri. I saw them in the railroad yards and right in front of the passenger depot. They had their windows all up and hanging out of the windows.
Q. Pretty fair-looking set of negroes?
A. Yes, sir; they were. They were above the average, I think.
Q. Were they all nrgroes?
A. No, sir; they were not all negroes. My understanding is there was about thirty men, and five were white men; twenty-four or twenty-five colored men and about five white men.
Q. Where did you send them?
A. At our mine near McAlester, Cherryvale, Indian Territory.
Q. Mines owned by the company?
A. Yes, sir.
Q. Are they at work out there now?
A. Yes; so I am informed.
Q. Were they a well-behaved, decent set of men, so far as you could see?
A. Yes, sir.
Q. Do you know whether they were armed or not?
A. I don't think they were. I wasn't in the car.
Q. Did you see any ap-earance of it or have any information they were armed?
A. No, sir.
Q. Were any guards with them?
A. No, sir; the only man that was with them was a clerk in our St. Louis office—a young man, I should say, 20 yrs. old.
122 Mr. JAMES BRIZZOLARA (of counsel for K. & T. Coal Co.): Any Pinkertons?
The WITNESS: No, sir.
Mr. JAMES BRIZZOLARA (of counsel for K. & T. Coal Co.): With Winchesters and double-barreled shotguns?
The WITNESS: No, sir.
Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): Why did you divert them from here down there?
A. I understood that Sunday afternoon, or Sunday night—in the first place, I understood Sunday afternoon that the governor had instructed the sheriff not to permit any colored miners to be taken into this county, and later in the evening I understood that there

were men from Bonanza that were patrolling the railroad from Bonanza to Jenson, and after taking counsel I recommended to our people that these men be diverted to some other place.

Cross-examination.

Mr. Mr. J. S. LITTLE:

Q. I will compliment you on doing one good thing anyhow—keeping those fellows out of here last Sunday evening. It saved us some trouble at least, I hope. You spoke about these miners. You understa*m*d they are at work in the Territory. Do you know whether they have sued the company for getting them in here—whether they have filed any suits against the company—these 30 miners that went up there?

A. No, sir; I have not heard it if they have.

Q. How many had you arranged for with reference to these 30? Had you had any others engaged at that time for importation?

A. We had information Saturday that there would be 70. It was a telegram. I never had any confirmation of the telegram, and never have found out whether it was simply a mistake in the telegram or whether our people expected to get 70 and only got 30, but on Saturday we expected 70, and when we heard of them Sunday there were 30.

Q. Has there been any since that time? Is there any arrangements made for additional miners to be shipped in here by the company?

A. No, sir.

Q. Does the company intend to do so, if not restrained by the court?

128 A. Well, I can't answer that question.

Q. I believe you attested the petition in the Federal court?

A. Yes, sir.

Q. You swore to it?

A. Yes, sir.

Q. I will ask you if you didn't state that the company had shipped in about 16 miners and were intending to ship in about 400 more.

A. Yes, sir.

Q. You don't know whether they have any additional arrangements consummated at this time or not?

A. No, sir; I don't know.

Q. What point in Kentucky did those negroes come from; do you know?

A. From Jellico, I think.

Q. Do you know whether that mine has in part, or largely, been worked by convict labor in Jellico, Kentucky?

A. I don't know.

Q. These men at Monett, did you go through the car and see them?

A. No, sir.

Q. You just saw their heads sticking out?

A. Yes; I just walked along by the side of the coach.

Q. You don't know whether they were armed or not?
A. All I know is what I could see from the outside.
Q. You didn't see any arms?
A. No, sir.
Q. You don't know what they had around their persons or what was laying in the car, or anything of that sort?
A. No, sir.
Q. Do you know, of your own personal knowledge, whether there were any guards with them—other men outside of the miners themselves; any men—Pinkertons, we call them sometimes?
A. Yes; I know there were not.
Q. How did you learn that?
124 A. I know it in this way: that I would have been advised by our people. I was advised by our people of the arrangements they had made to move these men out here. If they had any Pinkerton men they would have advised me.
Q. You had been advised at that time of the probable trouble if they come in, were you not, when they come in?
A. At what time?
Q. This car-load of hands at Monett. At the time they should arrive here were you not anticipating there would be trouble over that or liable to be, to say the least?
A. Well, I would not say——
Q. (Interrupting.) Wasn't you anticipating there was a strong probability of trouble?
A. I would say there was a possibility of it.
Q. Considerable of a possibility, wasn't there? I suppose that is the reason you got the injunction or you would not have bothered about that. Was it your idea to have shipped in here thirty of these defenseless and harmless negroes, with nobody to protect them and having no guns themselves, and t-row them out in front of these turbulent miners to take their chances? Was that your idea in not bringing them in armed?
A. We brought 16 in in that way.
Q. That was before the thing got hot?
A. We had got the injunction.
Q. You got it Sunday; that is true. You hadn't had it up to that time?
A. No, sir.
Q. Did you expect the injunction to control all these men that quit? You knew there was but one or two officers out there, didn't you?
A. Yes, sir.
Q. How did you expect them to be defended if you got up a riot there?
A. We expected that the people would obey the order of the injunction.
Q. It wasn't "again" everybody. It wasn't "again" hanging negroes generally. Do you know what arrangements the company made for arms, guns, six-shooters, and Winchesters, and so on?

125 A. No, sir; I do not.

Q. What was the object of that wire fence? I never heard of that sort of a stockade before. Was that to keep the cows off, or what for?

A. It was to keep off intruders and to show people—to enclose that property.

Q. That that was "ours"?

A. That that was ours; yes, sir.

Q. Too good to be walked upon out in the woods?

A. Yes, sir.

Q. You stated that the miners went out, I believe, on the 28th of February, did you not, finally?

A. Yes, sir.

Q. Had they made any overtures to the company or to the operators? I mean, when I say company, to the adjustment or arbitration of these questions or troubles before that time.

A. Why, yes; I think that the miners' union had notified the company——

Q. Hadn't they made two respectable and very proper requests for a conference with the operators here at Fort Smith?

A. As I understand, the miners' union sent out a notice of that kind.

Q. I suppose they have a right to do that.

A. I suppose so; yes, sir.

Q. Your company saw proper to ignore that; didn't meet with them and try to adjust this trouble?

A. No, sir; our company didn't meet with them.

Q. And has not met?

A. No, sir.

Q. Has refused every overture of that sort?

A. I think it has; yes, sir.

Q. And you could not get any white miners. The first you got was these 16 negroes from Des Moines, Iowa, and these thirty more out in Kentucky, and they were not introduced in here for the purpose of forcing——

A. (Interrupting.) They were introduced in here to get coal.

Q. That was the abstract purpose?

A. Yes, sir.

Q. That was the ostensible purpose?

A. Yes, sir.

126 Q. Was it never discussed that putting the negroes in would have a salutary effect on this situation; it would make the miners weaken quicker, or anything of that sort, than it would to put white men in?

A. I don't know as it has been.

Redirect examination.

By Mr. B. R. DAVIDSON:

Q. Did the Kansas & Texas Coal Company have anything to do with the discharge of those 60 men that precipitated this strike?

A. Do you mean the 60 men that was discharged at Hartshorne by the Choctaw Coal Co.?

A. Yes, sir.

A. No, sir.

Q. It had nothing to do with that?

A. No, sir.

Q. Didn't recommend it and had nothing to do with it?

A. No, sir.

Q. That is what precipitated this strike, was it not?

A. I have heard that intimated; yes, sir.

The COURT: Can you explain why it is that your company refuses to treat with the miners if they made overtures to them?

The WITNESS: We are ready to treat with our own men.

The COURT: Why do you refuse to treat with these miners—these parties who have made the overtures?

The WITNESS: Because they are not in our employ.

The COURT: Is it the reason because they are union or non-union men?

The WITNESS: It has nothing at all to do with it. We are ready at all times to treat with men that are employed by our company.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): You do not care whether they belong to the union or do not belong to the union?

The WITNESS: No, sir.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): That cuts no figure?

The WITNESS: No, sir; nor no ice.

The COURT: These men were formerly in your employ, were they not?

A. No; I think some of the men——

127 The COURT (interrupting): These men down here at Huntington—the striking miners?

The WITNESS: Yes, sir; those men are, but this demand was not made by them, as I understand it.

By Mr. Jos. M. HILL:

Q. I will ask you if it is not the object, as you understand it, of this union to get all of the mines on the same schedule, and to control the labor in the various coal mines.

A. Why, yes; I suppose that is the object.

Q. And to fix the price of labor in the various coal mines throughout its district?

A. Yes, sir.

Q. Is that your understanding of its object?

A. I suppose it is. It may have other objects. I don't know that that covers it all.

Q. You do not belong to it, and you have not ridden the goat, and haven't learned all the secrets?

A. No, sir.

Q. Is *it* a secret organization, is it not?

A. That is what I understand.

Q. The condition of mines is very dissimilar, is it not, in different districts?

A. Yes, sir.

Q. In different districts and localities?

A. Yes, sir.

Q. They have attempted here to get a uniform scale for a very large area, have they not?

A. Yes, sir. Well, not exactly. There is a difference in the price.

Q. At the different places?

A. Yes, sir.

Q. The position of the company, as I understand you, is simply that they do not recognize that they have any business with the union? It is not in their employ and they have no connection with it?

A. No, sir; we want to deal with the men that are working for our company.

128 Q. And whenever the men that are working for you have any grievance and want to consult with you, you are always ready to consult them?

A. Yes, sir.

Q. Suppose that some of your workmen would come to you and say, "We come as the Huntington Lodge of United Mine Workers of America," would you receive them?

A. No, sir.

Q. If they come to you and say, "We come as a committee selected by your employees," and complained of this thing and that, would you receive them?

A. Yes, sir.

Q. That is the point you make?

A. Yes, sir.

Q. Why do you draw that distinction?

A. Because we are not interested and do not want to take any part with men that are employed by other companies. We want to deal only with men that are employed by our own company. We prefer not to have other companies interfere with our business and we do not want to interfere with theirs.

Q. You have troubles of your own?

A. Yes, sir.

Q. Would it be possible, in your judgment, to run your mines if you had to run them according to the rules and regulations of the miners' union?

A. We wouldn't want to run them that way; no, sir.

Q. Could you do it and do it successfully?

A. I don't think we could.

Q. That is the judgment of yourself and of all the other officials of the K. & T. Coal Co.?

A. Yes, sir.

Q. And for that reason you refuse to treat with them as a union?

A. Yes, sir.

129 Q. But you are always ready to treat with your employees or former employees?

A. Yes, sir.

The COURT: Suppose that a committee of union striking miners at Huntington were to present themselves and offer to treat—from a lodge of union men—would you refuse to receive them on that account?

The WITNESS: We would only treat with a committee that represented our own men.

The COURT: Couldn't you settle questions as well with a committee of a lodge of union striking miners as you could if they were divested of unionism? What would be the difference?

The WITNESS: If they were a committee from our own mines we would not ask them whether they were union men or not.

The COURT: I want to know why you would ask a committee of these striking miners whether they were union men or not.

The WITNESS: Because we only want to deal with our own men.

The COURT: They were your own men, and they went to treat with you. Now, why did you refuse? Is there any reason why? The union exists, don't it, in fact?

The WITNESS: I understand so; yes, sir.

The COURT: What would be the difference in treating with a committee from a lodge of union miners and to treat with the same men divested of unionism? Would there be any difference at all?

The WITNESS: We only want to deal with the men that were in our employ.

The COURT: That don't answer the question. Couldn't you treat as well with union men as you could with men who were not union men?

The WITNESS: I say we would not ask them. If they come to us as a committee of our men we would not ask them if they were union men.

The COURT: These striking men are not in your employ at this time. Is that the way you look at it?

A. Yes, sir.

The COURT: They were in your employ?

The WITNESS: Yes, sir.

130 The COURT: Suppose they come and want to treat with you. Would you not treat with them because they were union men?

The WITNESS: We would not treat with the union; no, sir.

The COURT: Just because it is a union?

The WITNESS: Not specially because it is a union; it is because we only want to treat with our own men.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): As I understand you, you won't treat with the union as a union?

The WITNESS: No, sir.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): You won't treat with even your own employees if they come to you representing the union?

WITNESS: No, sir.

—. But if they come to you representing your own employees

you treat with them, and don't care whether they are union men or not?

The WITNESS: That is it exactly.

The COURT: Suppose the union men would come to you and propose to do exactly right, wouldn't you treat with them? To treat on just and equitable terms. Wouldn't you treat with them then?

The WITNESS: We would not want to make any agreement with the union; it is a secret organization.

The COURT: In other words, you hold yourselves aloof from the others and stand apart like sovereign powers and say, "We won't recognize you as a union;" just sorter like the North used to do to the southern confederacy? (Applause.)

The WITNESS: I don't know about that. We are not employing the union. I don't know anything about it.

The COURT: All I want to know—of course, that has nothing to do with the discussion of this case, but I just wanted to satisfy myself upon that one proposition—why it was, if there was any valid reason you could give, why it was that your company would not treat with union men as well as non-union men.

The WITNESS: I have stated we would not ask. If they come as our own men, we would not ask them whether they were union men or not; it would be immaterial.

The COURT: Suppose that these men now are not in your employ, and they come to you and say, "We don't come as union men, but we come here to treat"—take three striking miners, and these three striking miners just say, "We divest ourselves of all unionism, and we come to you now to treat"—would you treat with them?

131 The WITNESS: I think so.

The COURT: Now, then, explain to me the difference—why it is you would not treat with these same three men if they come to you as union men.

The WITNESS: Simply because we do not know what the union is. It is a secret society, as I understand it, and we do not know who we are dealing with.

Mr. J. S. LITTLE (of counsel for State): You decline to recognize organized labor as an organization? That is the whole thing in a nutshell.

The WITNESS: It might be construed that way. We do not refuse to employ a man because he is a union man.

Mr. J. S. LITTLE (of counsel for State): Were you referring to organized labor as a union?

The WITNESS: Certainly.

Mr. J. S. LITTLE (of counsel for State): Then, if I understand the position of your company, it declines to negotiate with the organized labor—not organized labor, but the organization. You only negotiate with the individual men when they come to you as individuals?

The WITNESS: Yes, sir.

Mr. J. S. LITTLE (of counsel for State): But you are willing for them to represent the balance of the miners in the mine when they come?

The WITNESS: Yes, sir.

Mr. J. S. LITTLE (of counsel for State): Without knowing what kind of agreements they have entered into?

No response.

By Mr. Jos. M. HILL:

Q. Don't the miners take the same position? They won't send a committee to — representing the miners, but representing the union?

A. That is the position they took in this case.

Q. They won't come to you as Jones, Smith, and Brown, or a committee, representing the miners, but they come to you as Jones, Smith, and Brown, representing the union?

A. Yes, sir; that is the way they have done in this case.

Q. They won't come to you in the way that Judge Rowe (the court) suggests, as union men who are representing the miners?

A. No, sir.

132 Q. They come to you as official representatives of the union?

A. Yes, sir.

Q. And for that reason you won't have anything to do with them in that capacity?

A. Yes, sir.

Q. But if they will divest themselves of their official capacity as representing this union and want to speak for themselves and their fellow-workmen, you will treat with them at any time?

A. Yes, sir.

Q. Will this union deal with any one mining company? Don't it attempt to deal with all the various companies operating here? What is your information about that?

A. I am not sure about that.

Q. You don't know about these details?

A. No, sir.

The COURT: I want to understand this proposition clearly. We will take John Jones and Smith and Tom Brown. Now, all these men belong to the union organization, and they come to you and they say to you, "We don't come to you as union men; we have been with the striking miners, and we do not come to you as union men, but we come to make this demand of you, that if you will allow us ten cents additional—just take that, for example—on our wages, we will go to work," and you were to say, "Well, that is right; I will allow that." Now, then, suppose that these men came to you, these same men, as union men, and demanded ten cents additional——

A. (Interrupting.) And ask you to sign an agreement with the miners' union?

The COURT: Yes.

Answer. Well, we would not do it.

The COURT: Please explain to me why it would be right in one instance and wrong in the other.

The WITNESS: Simply because, as I said before, the miners' union

is a secret organization, and we do not know who we are dealing with.

The COURT: What would the secret organization have to do with the matter of right and justice between you and the miners?

The WITNESS: We would simply be making a contract with some one—we don't know what they are.

(Witness excused.)

133 STATE OF ARKANSAS, }
County of Sebastian. }

In the Circuit Court of Sebastian County for the Fort Smith District.

STATE OF ARKANSAS *ex Rel.* Jo. JOHNSON, Prosecuting Attorney, }
vs. }
KANSAS & TEXAS COAL COMPANY and ST. LOUIS & SAN FRANCISCO Railroad Company. }

Transcript of the Testimony of Dan. Hogan.

Before his honor Styles T. Rowe.

Appearances: For the State, Jo. Johnson, prosecuting attorney; John S. Little, Edgar E. Bryant, and Ben. T. Du Val. For the K. & T. Coal Co., Messrs. Hill & Brizzolara. For the St. L. & S. F. R. R. Co., B. R. Davidson.

April 27, 1899.

134 DAN. HOGAN, having been duly sworn upon behalf of the Kansas & Texas Coal Company, was examined in chief by Mr. Jos. M. Hill, and testified as follows, to wit:

Question. Were you present when Mr. Bennett Brown had a conversation with a man by the name of Zrossig, or some such name as that, who had been convicted in Squire Cliff's court down there, in regard to which there were some affidavits filed here in this case?

Answer. Yes, sir.

Q. Wish you would tell the court just what that conversation was.

A. Peter Zrossig had been apprehended there on the streets and searched for concealed weapons. On his person had been found a butcher knife, and he was taken to the calaboose and locked up. Squire Cliff was sent for and he came over, and he went to the court-room and brought the prisoner over, and he was tried and found guilty of carrying concealed weapons, and fined $50 and started to the jail. Commitment had been issued. Mr. Brown came in about that time and sent for me and informed me that he wanted to appeal the case. I went over to his office and took the squire over there. In fact, they already had started with him to the jail and Mr.

Brown's office was in that direction. We went over there and I prepared the appeal papers, and just about the time I was finishing the papers up, or some time after, maybe, Mr. Brown engaged in conversation with Zrossig, the defendant, and asked him if he did not know it was a violation of law to carry concealed weapons. He said he didn't; he thought he could carry a butcher knife. Mr. Brown told him if he felt himself in danger of life or limb to get him a shotgun or Winchester, or, if it was necessary, put a cannon on his back, and if anybody interfered with him in his lawful discharge of his duty or attempted his life in any way, not to hesitate, but to blow the top of their heads off; but, he says, "Remember that you must never be the aggressor; always let the other fellow be the aggressor."

Q. I see in an affidavit here the following statement (reads to witness statement of A. J. Burke). Is that correct as a statement of your position as given by Mr. Burke?

135 A. Well, it is hardly correct. I stated to Mr. Burke, when asked to make this statement—I said to him that I did not care to take sides in the matter—I hadn't taken sides up to this hour except in a legal way, and I did not desire to become anybody's witness, and much less by way of affidavit; that if they wanted my testimony they could summon me, and I would come here and testify before the chancellor. I had another reason that I did not express to him, and that was that in addition to the things they were going to place in the affidavits I knew there were some qualified statements that Mr. Brown had made that the judge ought to have knowledge of.

Q. Those are the qualified statements which you are giving here to the court?

A. Yes, sir.

Q. And they don't appear in this affidavit?

A. No, sir. The affidavit is true so far as it goes, but it does not qualify Mr. Brown's statement in the way it ought to be qualified.

Q. It does not tell the entire conversation?

A. No, sir.

Q. Nor the circumstances of it? Did you tell Mr. Brown of this trial and the way it was conducted?

A. Yes, sir.

136 *Opinion of Court.*

In the Circuit Court of the United States for the Fort Smith Division of the Western District of Arkansas.

THE STATE OF ARKANSAS, Plaintiff,
vs.
KANSAS AND TEXAS COAL COMPANY and ST. LOUIS & SAN FRANCISCO Railroad Company, Defendants.

On April 23, 1899, this cause was brought by the State (at the relation of Jo. Johnson, prosecuting attorney for the twelfth judicial

circuit) in the circuit court of Sebastian county for the Greenwood district, in the State of Arkansas. From the complaint it appears that both defendant companies are Missouri corporations; that the defendant coal company (hereinafter designated coal company for convenience), when the bill was filed, owned and was operating a coal mine at Huntington, in said Greenwood district of Sebastian county, and that the defendant railroad company (hereinafter designated railroad company for convenience) owned and operated a railroad in said county and twelvth judicial circuit. Omitting, for the purposes of this motion, irrelevant matter, the bill charges "that the defendant coal company is threatening and is about to import into said county (Sebastian) and town of Huntington, over a line of their codefendant's railroad, a large number of armed men of the low and lawless type of humanity, to wit, about two hundred, to the great danger of the public peace, morals, and good health of said county, and more particularly of said town."

On the 18th of July, 1899, the defendants filed a joint petition in said court, accompanied by a bond in the usual form, and prayed for an order of removal of this case to this court. The order of removal was denied by the State court, and thereupon the defendant companies procured and afterwards, on the 25th day of July, 1899, caused to be filed in this court a transcript of all the proceedings of the State court. On August 7, 1899, the State filed in this court a motion to dismiss the case for the following reasons: (1) Because the petition for removal and transcript of the record of the circuit court of Sebastian county for the Greenwood district thereof show that it is not removable to this court under the laws of the United States; (2) because the State of Arkansas being plaintiff and defendants alleged to be citizens of the State of Missouri, this court could acquire no jurisdiction on the ground of diverse citizenship; (3) because the record aforesaid shows it is not a civil action for the enforcement of a right arising under the Constitution and laws of the United States or treaties made under their authority, or arose under the Constitution and laws and treaties aforesaid; (4) because under the constitution and laws of the State of Arkansas the St. Louis & San Francisco Railroad Company, one of the defendants, is a domestic corporation and is subject to the jurisdiction of the courts of said State.

137 ROGERS, *J.:*

Counsel who filed the motion to dismiss has made no point with reference to the first paragraph of the motion, and it is not necessary to consider it unless it be intended thereby to raise the question that it does not appear that the amount in controversy exceeds the sum of two thousand dollars. That question is *res adjudicata* in this court. Hume *v.* City of Fort Smith, 93 Fed., 857. See also 67 U. S., 485.

It has been held that a State is not a citizen, and under the judiciary acts of the United States it is well settled that a suit between a State and a citizen or corporation of another State is not between citizens of different States, and that the circuit court of the United States has no jurisdiction of it unless it arises under the Constitution,

laws, or treaties of the United States. Amex *v.* Kansas, 111 U. S., 449; Stone *v.* S. C., 117 U. S., 430; Germania Ins. Co. *v.* Wis., 119 U. S., 473.

The second paragraph of the motion to dismiss, therefore, is well taken. The fourth paragraph of the motion has been settled adversely to the motion in the case of St. Louis & San Francisco Railway Co. *v.* James, 161 U. S., 545.

Nothing remaains to consider except the third paragraph of the motion. It is conceded and is settled law that under the act of August 13, 1888, a case (not depending upon the citizenship of the parties nor otherwise specially provided for) cannot be removed from a State court into the circuit court of the United States as one arising under the Constitution, laws, or treaties of the United States unless that appears by the plaintiff's statement of his own claim, and if it does not so appear the want cannot be supplied by any statement in the petition for removal or in the subsequent pleadings. Tenn. *v.* U. & P. Bank, 152 U. S., 452; Chappell *v.* Waterworth, 155 U. S., 102; Postal Telegraph Co. *v.* Ala., 155 U. S., 482; East Land Co. *v.* Brown, 155 U. S., 488; Tex. Pa. Rw. Co. *v.* Cody, 166 U. S., 607; Walker *v.* Collins, 156 U. S., 57.

138 The cases cited make it clear that in determining whether or not the present case is a suit of a civil nature arising under the Constitution or laws of the United States or treaties made or which shall be made under their authority must be determined by an examination of the complaint itself, and not by anything which is found either in the petition for removal or in any subsequent pleadings filed. Attention is therefore directed to an examination of adjudged cases determining when a suit is one "arising under the Constitution or laws of the United States," etc. In Tenn. *v.* U. and P. Bank, 152 U. S., 459–462, it was said:

"The earliest act of Congress which conferred on the circuit courts of the United States general jurisdiction of suits of a civil nature, at common law or in equity, arising under the Constitution or laws of the United States or treaties made or which shall be made under their authority" was the act of March the 3d, 1875, c. 137, 18 Stat., 470. Under section 1 of that act, providing that those courts should have original cognizance of such suits when the matter in dispute exceede- the sum or value of $500, their jurisdiction was exercised in cases in which the plaintiff's statement of his cause of action showed that he relied on some right under the Constitution or laws of the United States.

Feebleman *vs.* Packard, 109 U. S., 421; Kansas Pacific Railroad *v.* Atchison, &c., Railroad, 112 U. S., 414; New Orleans *v.* Houston, 119 U. S., 265; Bachrack *v.* Norton, 132 U. S., 337; Cooke *v.* Avery, 147 U. S., 375. And under section 2 of that act, which provided that any suit of a civil nature, at law or in equity, brought in any State court "arising under the Constitution or law- of the United States or treaties made or which shall be made under their authority" might be removed by either party into the circuit court of the United States, it was held sufficient to justify a removal by the defendant that the record at the time of the removal showed that either party

claimed a right under the Constitution or laws of the United States. Railroad Co. *v.* Mississippi, 102 U. S., 135; Ames *v.* Kansas, 111 U. S., 449, 462; Brown *v.* Houston, 114 U. S., 622; Providence Saving Society *v.* Ford, 114 U. S., 635–642; Pacific Railroad Removal cases, 115 U. S., 1; Tennessee *v.* Whitworth, 117 U. S., 129–139; Southern Pacific Railroad *v.* California, 118 U. S., 109; Bock *v.* Perkins, 139 U. S., 628.

"But, as has been decided under that act, the suit must be one in which some title, right, privilege, or immunity on which the recovery depends will be defeated by one construction of the Constitution or a law or treaty of the United States or sustained by a contrary construction." Carson *v.* Dunham, 121 U. S., 421–427. "A cause cannot be removed from a State court simply because in the progress of the litigation it may become necessary to give a construction to the Constitution or laws of the United States." Gold Washing Co. *v.* Keys, 96 U. S., 199, 203. "And the question whether a party claims a right under the Constitution or laws of the United States is to be ascertained by the legal construction of its own allegation, and not by the effect attributed to those allegations by the adverse party." Central Railroad *vs.* Mills, 113 U. S., 249–257. "Even under the acts of 1875 the jurisdiction of the circuit court of the United States could not be sustained over a suit originally brought in that court upon the ground that the suit was one arising under the Constitution, laws, or treaties of the United States, unless that appeared in the plaintiff's statement of his own claim." This was distinctly adjudged and the reasons clearly stated in Metcalf
139 *v.* Watertown, 128 U. S., 586, 589, in which Mr. Justice Harlan, after pointing out that the cases in which it had been held sufficient that the Federal question upon which the case depended was first presented by the answer or plea of the defendant were cases of removal, in which, therefore, the requisite of jurisdiction appeared on the record at the time when the jurisdiction of the circuit court of the United States attached, said: "Where, however, the original jurisdiction of a circuit court of the United States is invoked upon the sole ground that the determination of the suit depends upon some question of a Federal nature, it must appear, at the outset, from the declaration or the bill of the party suing that the suit is of that character—in other words, it must appear in that class of cases that the suit was one of which the circuit court, at the time its jurisdiction is invoked, could properly take cognizance.

"If it does not so appear, then the court, upon demurrer or motion or upon its own inspection of the pleading, must dismiss the suit, just as it would remand to the State court a suit which the record at the time of removal failed to show was within the jurisdiction of the circuit court. It cannot retain it in order to see whether the defendant may not raise some question of a Federal nature, upon which the right of recovery will finally depend, and if so attained, the want of jurisdiction at the commencement of the suit is not cured by an answer or plea which may suggest a question of that kind." That view has been affirmed and acted on at the present term in Colorado Co. *v.* Turck, 150 U. S., 138–143.

The same rule applies more comprehensively to the acts of 1887 and 1888. In section 1, as thereby amended, the words giving original cognizance to the circuit courts of the United States in this class of cases are the same as in the act of 1875 (except that the jurisdictional amount is fixed at $2,000), and it is therefore essential to their jurisdiction that the plaintiff's declaration or bill should show that he asserts the right under the Constitution or laws of the United States, but the corresponding clause in section 2 allows removals from a State court to be made only by defendant, and of suits "of which the circuit courts of the United States are given original jurisdiction by the preceding section," thus limiting the jurisdiction of the circuit court of the United States on removal by this defendant under this section to such suits as might have been brought in that court by the plaintiff under the first section. 24 Stat., 553; 25 Stat., 434. The change is in accordance with the general policy of these acts, manifest upon their face, and often recognized by this court, to contract the jurisdiction of the circuit courts of the United States. Smith *v.* Lyon, 133 U. S., 315–320; *In re* Pennsylvania Company, 137 U. S., 451–454; Fiske *v.* Henarie, 142 U. S., 459–467; Shaw *v.* Quincy Mining Company, 145 U. S., 444–449; Martin *vs.* Baltimore & Ohio Railroad, 151 U. S., 673, 687.

In Ames *v.* Kansas, 11 U. S., 462, Chief Justice Waite, delivering the opinion of the court and sustaining its jurisdiction, said:

"The rights set up by the company and by the directors as well will be defeated by one construction of these acts and sustained by the opposite construction. When this is so, it has never been doubted that a case is presented which arises under the laws of the United States." *Sighting* Cohens *v.* Va., 6 Wheat., 264, 379; Gold Washing and Water Company *v.* Keyes, 96 U. S., 201; Railroad Company *v.* Miss., 102 U. S., 140.

In Starin *v.* N. Y., 115 U. S., 257, the same learned chief justice said: "The character of a case is determined by the questions involved. Osborne *v.* Bank of the United States, 9 Wheat., 737–824. If from the questions it appears that some title, right, privilege, or immunity on which recovery depends will be defeated by one construction of the Constitution or a law of the United States, or sustained by the opposite construction, the case will be one arising under the Constitution or laws of the United States within the meaning of that term as used in the acts of 1875; otherwise not. Such is the effect of the decisions on this subject." *Sighting* Cohens *v.* Va., 6 Wheat., 264; Osborne *v.* Bank of the United States, 9 Wheat., 737; The Mayor *v.* Cooper, 6 Wall., 247; Gold Washing & Water Co. *v.* Keyes, 96 U. S., 199; Tenn. *v.* Davis, 100 U. S., 257; R. R. Company *v.* Miss., 102 U. S., 135; Ames *v.* Kansas, 111 U. S., 449; Kansas Pacific *v.* Atchison, 112 U. S., 414; Providence Saving Company *v.* Ford, 114 U. S., 636; Pacific Removal cases, 115 U. S., 1.

140 In Southern Pacific Railroad Co. *v.* Calif., 118 U. S., 112, the same learned Chief Justice approved R. R. Co. *vs.* Miss., *supra;* Ames *v.* Kansas, *supra;* Starin *v.* N. Y., *supra*, quoting the same language which he had previously used in Starin *v.* N. Y., *supra.*

In Germania Ins. Co. *v.* Wis., 119 U. S., 475, the same learned Chief Justice again reiterated the same doctrine, using the same language which had been used in Ames *v.* Kansas, *supra.*

In Minn. *v.* Duluth & I. R. R. Co. *et al.*, 87 Fed., 498, Judge Lochren, delivering the opinion of the court, calls attention to what has been held in Tenn. *v.* Union & Planters' Bank, *supra;* Starin *v.* N. Y., *supra;* Carson *v.* Dunham, *supra,* and further states that on the precise point under consideration the decisions under the act of March 3, 1887, are equally applicable to the act of August 13, 1888. He then says: "To give the United — circuit court jurisdiction it is not necessary that it should appear that plaintiff's right to recover is based upon and supported by some provision of the Constitution or statutes of the United States. A Federal question is equally presented if it appears from plaintiff's statement of facts that a construction which may be fairly claimed and contended for of a provision of such Constitution or statutes would defeat plaintiff's right to recover."

In Lowery *v.* Chicago, B. & Q. R. R. Co., 46 Fed., p. 83, Judge Caldwell said: "It is enough that there is a Federal question in the case, whether it is relied on by the plaintiff or the defendant. A case arises under a law of the United States wherever that law is the basis of the right or privilege or claim or protection or defense of the party, in whole or in part, by whom it is set up."

To the cases cited might be added many others to the same effect. These, however, suffice to show and establish the rule. It remains to apply the principles declared to the case at bar. In the examination of the complaint for the purpose of this motion its crudities or the insufficiency of facts to warrant the relief sought, if such be the case, are not open to attack or criticism, since defects in these regards may be corrected by amendment in either of the courts having jurisdiction if the facts warrant. This court is limited now to the question as to whether, at the time the jurisdiction of this court was invoked, it appeared from the plaintiff's complaint that the controversy between the parties involved a Federal question. The substantial and material allegations of fact in the complaint is (and it is the only allegation of fact in it which is considered substantial and material) that the defendant coal company "is threatening and is about to import into said county and town of Huntington, over the line of their codefendant's railroad, a large number of armed men of the low and lawless type of humanity, to wit, about two hundred." The allegations as to what results would follow such importations are merely conjectural or speculative, or at most a matter of opinion upon the part of the relator, depending, of course, upon the type of men imported and their physical, financial, and moral conditions. Of these conditions it does not appear that the relator knows anything. No facts appear from which it may be seen what the character of the nuisance is which their importation will produce or in what way the peace, morals, or health of the State and the town will be affected or in what way riot and bloodshed would be brought about or the nature and character of the contagious or infectious diseases they would disseminate. It is not even alleged that they

now have or have been subjected to any diseases. All these matters are purely speculative.

The contention on the part of the plaintiff is that, under the police power of the State, it has the right to prevent the defendant coal company from importing into the State and to prevent the defendant railroad company from transporting over its road the class of persons described in the complaint as "armed men of the low and lawless type of humanity." The contention of the defendants is that the exercise of such power is in violation of the interstate-commerce law and of the fourteenth amendment to the Constitution of the United States. On this motion to dismiss or to remand, my sole duty is to ascertain if any such defense can fairly be interposed. The merits of the question are not now involved and should not be determined, except so far as may be necessary in order to determine
141 whether the State's contention involves an invasion of the powers confided to the United States under its Constitution or statutes, or, to state it differently and within the language of the adjudged cases, whether it appears from plaintiff's statement of facts that a construction which may be fairly claimed and contended for of a provision of the Constitution or statutes of the United States would defeat plaintiff's right to relief. It is not specifically alleged in the complaint that the defendant railroad company is engaged in interstate commerce. It is alleged that it is a Missouri corporation, and that its codefendant had threatened and was about to import over the line of said railroad a certain designated type of men. It was not argued at the hearing that said company was not engaged in interstate commerce in the transportation of the men referred to, and it is fairly to be deduced from the complaint that such was true. The word "import" itself implies a bringing of men either from a foreign country or another State into this State. The same is true of the defendant coal company. The employment and shipment of men from other States into Arkansas over its codefendant's railroad is interstate commerce.

It was argued at the bar that coal mining was not interstate commerce. That is true. This court so held in U. S. *v.* Boyer, 85 Fed., 425, where a full discussion of what it takes to constitute interstate commerce and a collation of adjudged cases may be found, and from which it was deduced that—

"When the (interstate) commerce begins is determined not by the character of the commodity nor by the intention of the owner to transfer it to another State for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation or the actual commencement of its transfer to another State. At that time the power and regulating authority of the State ceases and that of Congress attaches and continues until it has reached another State and become mingled with the general mass of the property in the latter State; that neither the production or manufacture of articles or commodities which constitute subjects of commerce and which are intended for trade and traffic with citizens of other States, nor the preparation for their transportation from the State where produced or manufactured prior to the commencement

of the actual transfer or transmission thereof to another State, constitutes that interstate commerce which comes within the regulating power of Congress." *In re* Green, 52 Fed., 113.

But interstate commerce is not confined to goods, wares, and merchandise. It embraces passengers. It was not argued otherwise at the hearing.

In Railroad Co. *v.* Husen, 95 U. S., 469, which is a case growing out of the statute of the State of Missouri providing that "no Texas, Mexican, or Indian cattle shall be driven or otherwise conveyed into or remain in any county of this State between the first day of March & the first day of November in each year by any person or persons whatsoever," the court, in holding the statute unconstitutional because it violated the interstate commerce clause of the Federal Constitution, said:

"It seems hardly necessary to argue at length that unless the statute can be justified as legitimate exercise of the police power of the State it is a usurpation of the power vested exclusively in Congress. It is a plain regulation of interstate commerce, a regulation extending to prohibition. Whatever may be the power of a State over commerce that is completely internal, it can no more prohibit or regulate that which is interstate than it can that which is with foreign nations. Power over one is given by the Constitution of the United States to Congress in the same words in which it is given over the other, and in both cases it is necessarily exclusive. That the transportation of property from one State to another is a branch of interstate commerce is undeniable, and no attempt has been made in this case to deny it.

"The Missouri statute is a plain interference of such transportation and attempted exercise over it of the highest possible power—that of destruction. It meets at the borders of the State a large and common subject of commerce and prohibits its crossing the State line during two-thirds of each year, with a proviso, however, that such cattle may come across the line loaded upon a railroad car or steamboat and pass through the State without being unloaded; but even the right of steamboat owners and railroad companies to transport such property through the State is loaded by the law with onerous liabilities because of their agency in the transportation. The object and effects of the statute are therefore to obstruct interstate commerce, and to discriminate between the property of the citizens of one State and that of citizens of other States. This court has heretofore said that interstate transportation of passengers is beyond the reach of a State legislature; and if, as we have held, State taxation of persons passing from one State to another or a State tax upon interstate transportation of passengers is prohibited by the Constitution because a burden upon it *a fortiori*, if possible, is a State tax upon the carriage of merchandise from State to State. Transportation is essential to commerce, or rather it is commerce itself, and every obstacle to it or burden laid upon it by legislative authority is regulation. Case of the State freight tax, 15 Wall., 232; Ward *v.* Maryland, 12 *id.*, 418; Welton *v.* The State of Missouri, 91 U. S., 275; Henderson *et al. v.* Mayor of the City of

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New York *et al.*, 92 *id.*, 259; Chylung *v.* Freeman *et al.*, *id.*, 275. The two latter of these cases refer to obstructions against the admission of persons into a State, but the principles asserted are equally applicable to all subjects of commerce."

It will be observed that the Missouri statute under discussion was a prohibitory statute. In the case at bar the bill is based on no statute. No statute has been referred to as relating to such persons as are designated in the bill. The court knows of none. Indeed, there is none. The State through its legislature has not attempted to exercise its police power in this regard. It is an attempt to have the court declare what the law of the State is or what measures are needful to the State in this behalf, without any expression whatever of the legislative department of the State, and to declare that the designated type of persons mentioned in the bill shall not be brought into the State at all, at any time, by the defendant. It is absolutely and unconditionally prohibitory of the designated class.

It may well be inquired whether a State court can lawfully declare, independent of any statute and independent of the common law as adopted by statute, what the policy of the State is with reference to the type or character of persons coming thereto.

I have found no case in which it has been done. I find no author who recognizes any such doctrine. All the cases examined have arisen out of statutes alleged to be unauthorized by the police power or powers reserved to States. I need not allude to the anomalous condition which would result from prohibiting the defendants in this case from bringing persons into the State of the class designated and leaving all other companies and all other persons the privilege of doing so at their pleasure, for this only tends to show that the police power of the State in this behalf should be exercised by the legislature and applied to all persons alike. On this point Prentice, in his work on Police Powers, p. 31, says: "It belongs to the legislative branch of the Government to determine primarily what measures are appropriate and useful for the protection of the public morals, the public health, or the public safety.

In Mugler *v.* Kansas, 123 U. S., 661, one of the questions was as to what authority should determine whether the manufacture of particular articles of drink would injuriously affect the public. This question grew out of a law prohibiting the manufacture or sale of liquor in that State. The court said: "Under our system that power is lodged with the legislative branch of the Government. It belongs to that department to exert what are known as the police power of the State and to determine primarily what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety."

As tending to establish the correctness of this doctrine, in Railroad Company *v.* Husen, 95 U. S., 470, it is said:

"We admit that the deposit in Congress of the power to regulate foreign commerce and commerce among the States was not a surrender of that which may properly be denominated police power. What that power is it is difficult to define with sharp precision. It is generally said to extend to making regulations promotive of do-

mestic order, morals, health, and safety." As was said in Thorp *v.* The Rutland & Burlington Railroad Company, 27 Vt., 149: "It extends to the protection of the lives, limbs, health, comfort, and quiet of all persons and the protection of all property within the State."

143 According to the maxim, *Sic utere tuo ut alienum non lædas*, which, being of universal application, it must of course be within the range of legislative action to define the mode and manner in which every one may so use his own as not to injure others. It is further said that by the general police power of a State "persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the State, of the perfect right of the legislature to do which no question ever was or, upon acknowledged general principles, ever can be made, so far as natural persons are concerned." It may also be admitted that the police powers of the State justifies the adoption of precautionary measures against social evils.

Under it a State may legislate to prevent the spread of crime or pauperism or disturbance of the peace. It may exclude from its limits convicts, paupers, idiots and lunatics, and persons likely to become a public charge, as well as persons afflicted by contagious or infectious diseases, a right founded, as intimated in the Passenger cases, 7 Howe, 283, by Mr. Justice Greer, in the sacred law of self-defense. *Vide* 3 Sawyer, 283. The same principle, it may also be conceded, would justify the exclusion of property dangerous to the property of the citizens of the State—for example, animals having contagious or infectious diseases. All the exertions of power are in immediate protection of persons and property against noxious acts of other persons or such a use of property as is injurious to the property of others. They are self-defensive.

"But whatever may be the nature and reach of the police power of a State, it cannot be exercised over a subject confided exclusively to Congress by the Federal Constitution." See, also, People and Gilleam, 17 N. E. Rep'r (N. Y.), 343.

It will be seen, therefore, that, ordinarily at least, the exercise of what is known as the police power of the State is confided to its legislature.

But to recur to the question, Is it within the power of the State to enact legislation prohibiting the class of persons designated in the bill coming into the State? If the State cannot prohibit them by legislation, its courts cannot do so in the absence of legislation.

It may do so, all will admit, so far, at least, as the United States is concerned, if in doing so no power confided to the General Government is invaded thereby. It goes without saying that "no State can exercise power over a subject confided exclusively to Congress by the Federal Constitution. It cannot invade the domain of the National Government." Railroad Co. *v.* Husen, 95 U. S., 471. Let us, therefore, examine more analytically the allegations in the bill describing the class of persons it is sought to prohibit being imported into the State. They are "armed men of the low and lawless type." How are they armed? The bill does not say. The allega-

tion is broad enough to cover all kinds of arms. Art. 2, Amendments to the Constitution of the United States, declares that "a well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." Sec. 5, art. 2, of the present constitution of this State declares that "the citizens of this State shall have the right to keep and bear arms for their common defense."

In Cooley on Torts, page 301, the author says:

"No military or civil law can take from the State the right to bear arms for the common defense. This is an inherited and seditionary right, guaranteed also by State and Federal constitutions; but it extends no further than to keep and bear those arms which are suited and proper for the general defense of the community against invasion and oppression, and does not include the carrying of such weapons as are specially suited for deadly individual encounters."

This same doctrine has been recognized by the supreme court of this State in Fife *v.* State, 31 Ark., 455.

The above amendment to the Constitution of the United States, however, is a restraint upon Federal, and not upon State, legislation. Fife *v.* State, 31 Ark., 458. It will be seen by the examination of this case that it is a constitutional right of the citizens of this State, recognized by the court, that the citizens thereof shall have the right to keep and bear arms, and it is also seen from the above amendment to the Constitution of the United States that the Federal Government is denied the power to deprive the people of the right to keep and bear arms. By the fourteenth amendment to the Constitution of the United States, "All persons born or naturalized
144 in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." By this amendment to the Constitution of the United States a citizen of another State is guaranteed all the rights and privileges of the citizens of this State, and every State is forbidden to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States or deny to any person within its jurisdiction the equal protection of law. One of the rights, as we have seen, guaranteed by the constitution of this State to all of its citizens is that that they shall have the right to keep and bear arms for their common defense. If this right belongs to the citizens of this State under the fourteenth amendment, can the State pass any law which shall deprive citizens of other States of the same right under the same circumstances? It has not done so. There is no such statute. Is it not, therefore, one of the probable questions in controversy in this suit as to whether or not the State has the power to prohibit men who are armed coming into the State? It must be remembered that there is no allegation in the bill that these men are armed or banded together, coming or being imported into the State for the purpose of invading it or vio-

lating any laws thereof, or that their purpose is in any respect a violation of any of the laws of the State; but these armed men are described in the bill to be of the "low and lawless type." Let us examine what is meant by these words "low and lawless." The *Century Dictionary defines* "*low*" as "not high in character or condition; not haughty or proud; meek; lowly; lacking in dignity, refinement, or principle; vulgar, grovelling, abject, mean, base; in a mean condition, as 'a low-born fellow.'" The word "lawless" is defined by the Century Dictionary as "not subject or submissive to law; uncontrolled by law, whether natural, human, or divine." The question therefore arises whether it is within the power of the State to prohibit the class of persons thus described while armed coming or being brought into the State. No statute has been enacted to that effect. In Buell *v.* State, 45 Ark., 338, the supreme court said:

"It may be doubted whether it is competent for the legislature to authorize a town council to proscribe any particular class of people against whom no overt act is charged, although in Shafer *v.* Munna, 17 Md., 331, such a power, expressly conferred in the character of Hagerstown, was sustained. Possibly the right to live in a given community is a common right of which a person cannot be deprived, however degraded and subversive of good morals his occupation may be." Citing Milliken *v.* City Council, 54 Tex., 388; S. C., 38 Am. Rep., 639.

In re Ahfong, 1st Tea Cases, 213, is a case where a Chinese woman sued out a writ of *habeas corpus* in the circuit court of the United States for the district of California. She had been brought to San Francisco as a passenger, and, under a statute of California, had been declared by a commissioner of that State to be "a lewd and debauched woman," and was prohibited from landing in the State of California, and was remanded to the custody of the steamship, to be transported beyond the State. She sued out a writ of *habeas corpus* before the State district court of California and the writ was dismissed. It was appealed to the supreme court of California, and the judgment of the district court affirmed. She then sued out a writ of *habeas corpus* to the circuit court of the United States, as above stated. Mr. Justice Field delivered the opinion of the court, and, in that State, said:

"It is undoubtedly true that the police power of the State extends to all matters relating to the internal government of the State and the administration of its laws, which have not been surrendered to the General Government, and embraces regulations affecting the health, good order, morals, peace, and safety of society. Under this power all sorts of restrictions and burdens may be imposed, having for their object the advancement of the welfare of the people of the State, and when these are not in conflict with established principles or any constitutional prohibition, their validity cannot be questioned.

145 "It is equally true that the police power of the State may be exercised by precautionary measures against the increase of crime or pauperism or the spread of infectious diseases from per-

sons coming from other countries; that the State may entirely exclude convicts, lepers, and persons affected with incurable diseases; may refuse admission to paupers, idiots, lunatics, and others who from physical causes are likely to become a charge upon the public until security is afforded that they will not become such a charge, and may isolate the temporarily diseased until the danger of contagion is gone. The legality of precautionary measures of this kind have never been doubted. The right of the State in this respect has its foundation, as observed by Mr. Justice Grier in the Passenger cases (7 Howe, 48 U. S., 462), in the sacred law of self-defense, which no power granted to Congress can restrain or annul.

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"Where the evil apprehended by the State from the ingress of foreigners is that such foreigners will disregard the laws of the State, and thus be injurious to its peace, the remedy lies in the more vigorous enforcement of the laws, not in the exclusion of the parties. Gambling is considered by most States to be injurious to the morals of their people, and is made a public offense. It would hardly be considered as a legitimate exercise of the police power of the State to prevent a foreigner who had been a gambler in his own country from landing in ours.

"If after landing he pursues his former occupation, fine him, and, if he persist*ed* in it, imprison him, and the evil will be remedied. In some States the manufacture and sale of spirituous and intoxicating liquors are forbidden and punished as a misdemeanor. If the forei-ner coming to our shores is a manufacturer and dealer in such liquors, it would be deemed an illegitimate exercise of the police power to exclude him, on account of his calling, from the State. The remedy against any apprehended manufacture and sale would lie in such case in the enforcement of the penal laws of the State. So, if lewd women, lewd men, even if the parties be of the baser sort, who, when Paul preached at Thessalonica, set all the city in an uproar (Acts XVII, verse 5), land on our shores, the remedy against any subsequent lewd conduct on their part must be found in good laws or municipal regulations and a vigorous police. It is evident that if the possible violations of the laws of the State by emigrants or the supposed immorality of his past life or profession, where that immorality has not already resulted in a conviction for a felony, is to determine his right to land and to reside in the State or to pass through into other and interior States, a door will be opened to all sorts of oppressions. The doctrine now asserted by counsel for the commissioner of immigration, if maintained, would certainly be invoked, and at no distant day, when other parties besides low and despised Chinese women are the subjects of its application, and would then be seen to be a grievous departure from principle.

"I am aware of the very general feeling prevailing in this State against the Chinese and in opposition to the extension of any encouragement to their immigration hither. It is felt that the dissimilarity in physical characteristics, in language, manners, religion, and habits, will always prevent any possible assimilation of them

with our people. Admitting that there is ground for this feeling, it does not justify any legislation for their exclusion which might not be adopted against the inhabitants of the most favored nation of the Caucasian race and of Christian faith. If their further immigration is to be stopped, recourse must be had to the Federal Government, where the whole power over this subject lies. The State cannot exclude them arbitrarily, nor accomplish the same end by attributing to them a possible violation of its municipal laws. It is certainly desirable that all lewdness, especially when it takes the form of prostitution, should be suppressed, and that the most stringent measures to accomplish that end should be adopted.

"But I have little respect for that discriminating virtue which is shocked when a frail child of China is landed on our shore, and yet allows the bedizened and painted harlot of other countries to parade our streets and open her hells in broad day without molestation and without censure.

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146 "And the power of exclusion by the State, as we have already said, extends only to convicts, lepers, and persons incurably diseased, and to paupers and persons who, from physical causes, are likely to become a public charge. The detention of the petitioner is therefore unlawful under the tr-aty.

"But there is another view of this case equally conclusive for the discharge of the petitioner, which is founded upon the legislation of Congress since the adoption of the fourteenth amendment. That amendment in its first section designates who are citizens of the United States, and then declares that no State shall make or enforce any law which abridges their privileges or immunities. It also enacts that no State shall deprive 'any person' (dropping the distinctive designation of citizen) of life, liberty, or property without due process of law, nor deny to any person the equal protection of the law. The great fundamental rights of all citizens are thus secured against any State deprivation, and all persons, whether native or foreign, high or low, are, whilst within the jurisdiction of the United States, entitled to the equal protection of the law. Discriminating and partial legislation favoring particular persons or against particular persons of the same class is now prohibited.

"Equality of privilege is the constitutional right of all citizens, and equality of protection is the constitutional right of all persons.

"And equality of protection implies not only equal accessibility to the courts for the prevention or redress of wrong and the enforcement of rights, but equal exemption with others of the same class from all charges and burdens of every kind. Within these limits the power of the State exists, as it did previously to the adoption of the amendment, over all matters of internal police."

Another case—that of Chylung *v.* Freeman *et al.*, 92 U. S., 275—of the same nature and class as the Ahfong case and originating under the same California statute, came before the Supreme Court of the United States, and Mr. Justice Miller, in holding that class of legislation void, says:

"The passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress and not to the State. It has the power to regulate commerce with foreign nations. The responsibility for the character of those regulations and for the manner of their execution belongs solely to the National Government. If it be otherwise, a single State can at her pleasure embroil us in disastrous quarrels with other nations.

"We are not called upon by this statute to decide for or against the right of the State, in the absence of legislation by Congress, to protect herself by necessary and proper laws against paupers and convicted criminals from abroad, nor to lay down the definite limit of such right if it exists. Such a right can only arise from a vital necessity for its exercise, and cannot be carried beyond the scope of that necessity.

"When a State statute, limited to provisions necessary to that object alone, shall in a proper controversy come before us, it will be time enough to decide that question.

"This legislation is held void under the interstate-commerce clause of the Constitution, which provides that Congress shall have power 'to regulate commerce with foreign nations and among the several States and with the Indian tribes.'"

In the case of Hannibal & St. Joe Railroad Company *v.* Husen, *supra*, the court, after referring to the Chylung case and the New York passenger cases, said:

"These cases, it is true, speak only of the laws affecting the entrance of persons into a State, but the constitutional doctrine they maintain *are* equally applicable to interstate transportation of property. They deny the validity to any State legislation professing to be and exercise of police power for protection against evils from abroad which is beyond a necessity for its exercise whenever it interferes with the rights and powers of the Federal Government."

147 Bowman *v.* Chicago, etc., R. R. Co., 125 U. S., 465, is a case where Bowman sued the railroad Co. for refusing to convey a large lot of beer into Iowa in violation of a statute of that State. The Supreme Court of the United States reviewed all the decisions touching the police power of a State and the power of Congress to regulate interstate commerce, and in referring to the freight-tax cases, 15 Wall., 279 (quoting from. Mr. Justice Strong, speaking for the court), said:

"'Cases that have sustained State laws, alleged to be regulations of commerce among the States, have been such as related to bridges or dams across streams wholly within a State, police or health laws, or subjects of a kindred nature not strictly of commercial regulations. The subjects were such as in Gilman *v.* Philadelphia, 3 Wall., 713, it was said, "can be best regulated by rules and provisions suggested by the varying circumstances of different localities, and limited in their operations to such localities respectively." However this may be, the rule has been asserted with great clearness that whenever the subjects over which a power to regulate commerce is asserted are in their nature national or admit of one uniform system

or plan of regulation, they may justly be said to be of such a nature as to require exclusive legislation by Congress.

Cooley *v.* Port Wardens, 12 How., 299; Crandall *v.* State of Nevada, 6 Wall., 42.

"Surely transportation of passengers or merchandise through a State or from one State to another is of this nature. It is of national importance that over that subject there should be but one regulating power, for if one State can directly tax persons or property passing through it, or tax them indirectly by levying a tax upon their transportation, every other may, and thus commercial intercourse between the States remote from each other may be destroyed. The produce of Western States may thus be effectually excluded from eastern markets, for though it might bear the imposition of a single tax it would be crushed under a load of many. It was to guard against the possibility of such commercial embarrassment, no doubt, that the power of regulating commerce among the States was conferred upon the Federal Government.

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"The power conferred upon Congress to regulate commerce among the States is indeed contained in the same clause of the Constitution which confers upon it power to regulate commerce with foreign nations. The grant is conceived in the same terms, and the two powers are undoubtedly of the same class and character and equally extensive. The actual exercise of its power over either subject is equally and necessarily exclusive of that of the States and paramount over all the powers of the State, so that State legislation, however legitimate in its origin or object, when it conflicts with the positive legislation of Congress, or its intention reasonably implied from its silence, in respect to the subject of commerce of both kinds, must fail; and yet in respect to commerce among the States it may be, for the reason already assigned, that the same inference is not always to be drawn from the absence of congressional legislation, as might be the case of commerce with foreign nations. The question, therefore, may still be considered in each case as it arises, whether the fact that Congress has failed in this particular instance to provide by law a regulation of commerce among the States is conclusive of its intention that the subject shall be free from all positive regulations, or that until it positively interferes such commerce may be left to be freely dealt with by the respective States."

In the same opinion, discussing the State freight tax, 15 Wall., 232, they say:

"If the State has no power to tax freight and passengers passing through it or to or from it from or into another State, much less would it have the power directly to regulate such transportation or to forbid it altogether.

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"It may be material also to state in this connection that Congress has legislated on the general subject of interstate commerce by

means of railroads prior to the date of the transaction on
148 which the present suit is founded. Section 5258 of the Revised Statutes provides that "every railroad company in the United States whose road is operated by steam, its successors and assigns, is hereby authorized to carry upon and over its roads, boats, bridges, and ferries all passengers, troops, Government supplies, mails, freight, and property on their way from any State to another State, and to receive compensation therefor, and to connect with roads of other States, so as to form continuous lines for the transportation of the same to the place of destination." In the case of Railroad Co. *v.* Richmind, 19 Wall., 584, this section, then constituting a part of the act of Congress of June 15th, 1866, was considered. Referring to this act and the act of July 25th, 1866, authorizing the construction of bridges over the Mississippi river, the court says: These acts were passed under the power vested in Congress to regulate commerce among the several States, and were designed to remove trammels upon transportation between different States which had previously existed, and to prevent a creation of such trammels in future, and to facilitate railway transportation by authorizing the construction of bridges over navigable waters of the Miss-ippi. But they were intended to reach trammels interposed by State enactment or by existing laws of Congress. The power to regulate commerce among the several States was vested in Congress in order to secure equality and freedom in commercial intercourse against discriminating State legislation, p. 589.

"Congress had also legislated on the subject of the transportation of passengers and merchandise in chapter 6, title 48, of the Revised Statutes, pars. 4252–4289, inclusive, having reference, however, mainly to the transportation in vessels by water. But pars. 4278 & 4279 relate also to the transportation of nitro-glycerine and other similar explosive substances by land or water, and either as a matter of commerce with foreign countries or among the several States. Sec. 4,280 provides that the two preceding sections shall not be so construed as to prevent any State, Territory, district, city, or town within the United States from regulating or from prohibiting the traffic in or transportation of those substances between persons or places lying or being within their respective territorial limits, or from prohibiting the introduction thereof into such limit for sale, use, or consumption therein.

"So far as these regulations made by Congress extend, they are certainly indications of its intention that the transportation of commodities between the States shall be free, except where it is positively restricted by Congress itself or by the States in particular cases by the express permission of Congress.

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"Also (p. 702), commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as a purchase, sale, and exchange of commodities. For the regulation of commerce *is* thus defined there

can be only one system of rules, applicable alike to the whole country; and the authorities which can act for the whole country can alone adopt such a system. Action upon it by separate States is not therefore permissible."

Further on in the same case the court says:

"In the present case the defendant is sued as a common carrier in the State of Illinois, and the breach of duty alleged against it is a violation of the law of that State in refusing to receive and transport goods which as a common carrier by that law it was bound to accept and carry. It interposes as a defense a law of the State of Iowa which forbids the delivery of such goods within that State. Has the law of Iowa any extraterritorial force which does not belong to the law of the State of Illinois?

If the law of Iowa forbids the delivery and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter?

149 In view of this necessary operation of the law of Iowa, if it be valid, the language of this court in the case of Hall *v.* De Cuir, 95 U. S., 485, 488, is exactly in point. It was there said: "But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce or to interfere directly with its freedom does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position."

And on p. 490 of the same case is the following:

"The exclusive State power is made to rest not on the fact of the state or condition of the article, nor that it is the property usually passing by sale from hand to hand, but on the declaration found in the State laws and asserted as a State policy that it shall be excluded from commerce, and by this means the sovereign jurisdiction in the State is attempted to be created in a case where it did not previously exist. If this be the true construction of the constitutional provision, then the paramount power of Congress to regulate commerce is subject to a very material limitation, for it takes from Congress and leaves with the State the power to determine the commodities or articles of property which are the subject of lawful commerce. Congress may regulate, but the States determine what shall or shall not be regulated. Upon this theory the power to regulate commerce, instead of being paramount over the subject, would become subordinate to the State police power, for it is obvious that the power to determine the articles which may be the subject of commerce, and thus to circumscribe the scope and operation, is in effect the controlling one. The police power would not only be a formidable rival, but in a struggle must necessarily triumph over the commercial power, as the power to regulate is dependent upon the power to fix and determine upon the subjects to be regulated. The same process of legislation and reasoning adopted by the State and its courts could bring within the police power any article of consumption that a State may wish to exclude, whether it belonged to that which was drunk or to food and clothing, and with nearly equal claims to propriety, as malt liquors and the produce of fruits other than grapes

stand on no higher ground than the light wines of this and other countries, excluded in effect by the law as it now stands, and it would be only another step to regulate real or supposed extravagance in goods and clothing."

And on p. 495 the court says:

"In Brown *v.* Houston, 114 U. S., 622, 630, it was declared that the power of Congress over commerce among the States is certainly so far excluded that no State has power to make any law or regulation which will affect the free and unrestrained intercourse and trade between the States as Congress has left it, or which will impose any discriminating burden or tax upon the citizens or products of other States coming or brought within its jurisdiction. All laws and regulations are restrictive of natural freedom to some extent, and where no regulation is imposed by the government which has exclusive power to regulate it, it is an indication of its will that the matter shall be left free. So long as Congress does not pass any law to regulate commerce among the several States it thereby indicates its will that that commerce shall be free and untrammeled, and any regulation of the subject by the States is repugnant to such freedom. This has been frequently laid down as law in the judgments of this court."

It will be observed that no overt act is charged against any of the class of persons threatened and about to be imported by the defendant coal company over the defendant railroad company's lines. They are not alleged to be convicts or ex-convicts, nor are they alleged to be paupers, idiots, insane, or diseased persons. They are said to be "armed" and to belong to the "low and lawless type of humanity," not that they are low and lawless themselves, but are of that type. No statute of this State condemns the coming of such men hither. No expression of the legislative will relating to that class of men coming into the State has found a place in our laws.

They are silent on that subject. It will be time enough to
150 decide whether the State has a power to prohibit them coming when a proper case based on such a statute is brought to the attention of the court. It is enough now to say that under the fourteenth amendment and under the commerce clause of the Constitution they now have that right. If they have the right to come, then the coal company has a right to import them with their consent, and the railroad company has the right to transport them with their consent. It is not pretended that they are being brought here by force. In the opinion of the court, it is not within the power of any court, State or Federal, to prescribe what rules and regulations are needful to the welfare, peace, health, safety, and morals of the State, or to determine, without legislation, what class or classes of persons may lawfully come thereto.

That power belongs to the legislature of the State and must be exercised within constitutional bounds.

It remains to be added that it has been repeatedly held that a corporation is a person within the meaning of the fourteenth amendment to the Constitution. Smith *v.* Ames, 169 U. S., 466; Santa

Clara Co. *v.* So. Pa., 118 U. S., 394; Charlotte, *ect.*, R. R. *v.* Gibbs, 142 U. S., 386; Gulf, etc., R. R. *v.* Ellis, 165 U. S., 150.

It is vain to pursue this investigation farther. I cannot avoid the conclusion, in view of the authorities from which I have quoted, that on the face of the plaintiff's complaint it appears that a construction of the interstate-commerce clause & of the fourteenth amendment to the Constitution of the United States are both involved; necessarily so (and would also be involved even if this bill were based on a statute of this State covering the class of persons designated in the bill), and that a correct determination of the case makes it necessary to construe those provisions of the Constitution of the United States, and that the construction placed upon them must necessarily settle the controversy.

This conclusion determines the fate of the motion. It is overruled.

From the conclusions arrived at by the court it is obvious that the injunction in this case must be dissolved; no amount of proof that might be offered could possibly change the result already reached.

It was urged upon the argument that this court had no supervisory control over the action of the State court. That is true; but when this case is removed from the State court into this court it stands here for hearing and determination precisely as if it had originally been brought here, and it will not be contended that if this court had committed an error in granting an injunction in a given case that when it was so made to appear it would not reverse its action and dissolve it.

The same would be true if the bill were in the State courts. The motion, therefore, to dissolve the injunction will be sustained.

The other motion, restraining the plaintiff from prosecution of this suit in the State court, will not be entertained. If the State sees fit to continue the prosecution of this case in the State court it will be permitted to do so, so long as in its prosecution it does not interfere with the relief granted the defendants in this suit in this court. It is proper to say that I have given this last question no consideration other than such is involved in the proprieties of the case. In short, I have not determined that this court has not the power to stay the suit in the State court, but only that the State may, so far as this court is concerned, if it sees fit, proceed with the prosecution of the suit in its own court. The motion, therefore, to enjoin the prosecution of the suit in the State court will be overruled.

JNO. H. ROGERS,
District Judge.

Sept. 2, 1899.

(Endorsed on back:) Filed in open court this Sept. 2, 1899. Thomas Boles, clerk.

151 *Petition for Appeal.*

In the Circuit Court of the United States for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS, Plaintiff,
vs.
KANSAS & TEXAS COAL CO. & ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Defendants.

The above-named plaintiff, State of Arkansas, conceiving herself aggrieved by the order entered on Feb. 1st, 1900, in the above-entitled proceeding, doth hereby appeal from said order to the Supreme Court of the United States, and she prays that her appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

BEN. T. DU VAL,
Attorney for Plaintiff & Appellant.

Fort Smith, Ark., Feb. 20, 1900.

And now, to wit, on 20 February, 1900, it is ordered that the appeal be allowed as prayed for.

JNO. H. ROGERS,
U. S. Dist. Judge.

(Endorsed on back): Filed Feb. 20th, 1900. Thomas Boles, clerk, by Florence Hammersly, D. C.

152 *Assignment of Error.*

In the Circuit Court of the United States for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS at the Relation of Jo. JOHNSON, Pl'ff,
vs.
KANSAS & TEXAS COAL COMPANY and ST. LOUIS & SAN FRANCISCO Railroad Company, Def'ts.

Now, on this 20th day of February, A. D. 1900, comes the State of Arkansas, by her attorney, Ben. T. Du Val, and respectfully represents that she feels herself aggrieved by the judgment of the circuit court of the United States for the western district of Arkansas and Fort Smith division thereof in this cause, and assigns errors therein as follows:

First. The court erred in refusing to remand said cause to the circuit court of Sebastian county for the Greenwood district and in taking jurisdiction over said cause, because under the Constitution and laws of the United States this cause was not removable from the said State court to this court.

Second. The court erred in dissolving the injunction granted and issued by the said State court against the above-named defendants or appellees.

Third. The court erred in dismissing the plaintiff's bill of complaint for want of equity on its face, and does not state a cause of action.

Fourth. The court erred in finding that the evidence did not sustain the allegations of the bill.

Fifth. The court erred in taking jurisdiction to hear and determine said cause, because under the Constitution and laws of
153 the United States the said court had no jurisdiction over the same.

Wherefore the said plaintiff or appellant prays this hon. court to examine and correct the errors assigned, and for the reversal of the said judgment of the said circuit court of the United States for the Fort Smith division of the western district of Arkansas in the above-entitled cause by the Supreme Court of the United States.

BEN. T. DU VAL,
Attorney for Appellant, Fort Smith, Ark.

(Endorsed on back :) Filed Feb. 20th, 1900. Thomas Boles, clerk, by Florence Hammersly, D. C.

154 *Stipulation of Counsel.*

In the District Court of the United States for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS
vs.
THE KANSAS & TEXAS COAL CO. and THE ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

It is agreed and stipulated by and between Ben. T. Du Val, counsel for complainant, and Hill & Brizzolara, on the part of the defendants:

First. That the following affidavits, taken on the part of the plaintiff and read on motion to dissolve injunction before the judge who granted it, to wit: George Simmons, W. W. McCracken, J. H. Ferguson, W. J. Clifft, A. J. Burke, Sol. Lodge, Wm. Dennie, W. W. McCracken, George Simmons, T. F. Martin, George Bunch, O. T. Looper, Will McKowen, Jake Richie, W. F. Williams, Geo. A. Hutchenson, S. J. Jackson, J. N. Roberts, J. H. Davis, John J. Beggs, and the telegrams addressed to Jo. Johnson by O. C. Hartley, county clerk, and John R. Tanner, governor of Illinois, read on the motion to dissolve in the State court, shall be taken and considered by the court as evidence on the part of the complainants upon final hearing, all objections to the mode and manner of taking same to be waived.

It is further agreed that the testimony of F. E. Doubleday, taken before the Hon. Styles T. Rowe, judge of the circuit court for the

twelfth judicial circuit of Arkansas, and of Bennett Brown and Dan. Hogan, and affidavit of W. C. Hardestier, taken at the same time on a motion to dissolve the injunction, and the testimony of W. L. Warner and Bennett Brown, taken before this court on the 9th day of August, 1899, on motion to dissolve herein, shall be taken
155 and considered by the court as evidence on the part of the defendants, all exceptions and objections as to the mode and manner of taking same being waived.

And we agree to submit the case to the court for final decree upon the complaint, answer, replication thereto, and the foregoing testimony.

Jan'y 19, 1900.

BEN T. DU VAL,
Attorney for Plaintiffs.
HILL & BRIZZOLARA,
Attorney for Defendants.

(Endorsed on back:) Filed in open court 1, 19, 1900. Thomas Boles, clerk, by Florence Hammersly, D. C.

156 *Record Entries.*

In the Circuit Court of the United States for the Fort Smith Division of the Western District of Arkansas, June Term, 1899, Monday Morning, 9 o'clock, July 31, 1899.

Court met pursuant to adjournment.

Present: The Honorable Jno. H. Rogers, judge of the district court of the United States for the western district of Arkansas.

STATE OF ARKANSAS *vs.* KANSAS & TEXAS COAL COMPANY AND ST. L. & S. F. R'y Co.	In Equity. No. 121.

Ordered that B. T. Du Val, Esqr., be permitted to take out the papers in this cause.

Jos. M. Hill, Esq., attorney for defendant, files answer and motion to dissolve injunction issued by the State court and for restraining order against State authorities, and by consent of parties the hearing of these motions is set for August 8th, 1899.

MONDAY, *Aug.* 7, 1899.

(Caption omitted.)

Now, on this day, Col. Ben. T. Du Val, attorney for plaintiff, files motion to dismiss this cause.

TUESDAY, *August* 8, 1899.

(Caption omitted.)

Now, on this day, the motion of the plaintiff for an order to dismiss this cause, heretofore filed herein, is argued by Ben T. Du Val,

counsel for plaintiff, and J. M. Hill, for defendants, and submitted to the court and by the court taken under advisement.

WEDNESDAY, *Aug.* 9, 1899.

(Caption omitted.)

Now, on this day, comes B. T. Du Val, solicitor for the plaintiff, and files a motion to postpone the hearing of defendants' motion to dissolve the injunction granted herein by Hon. S. T. Rowe, judge of the 12th judicial circuit of Arkansas, and a motion for a full bench of this court at the hearing of said motion to dissolve. The court, after being fully advised in the premises, doth overrule each of said motions; to which rulings of the court the plaintiff excepts.

157 WEDNESDAY, *Aug.* 9, 1899.

(Caption omitted.)

Now, on this day, the motion to dissolve the injunction granted herein by Hon. S. T. Rowe, judge of the 12th judicial circuit of Arkansas, heretofore filed herein by the defendants in this cause, came on to be heard; whereupon the defendants are permitted to introduce testimony in support of their motion, and leave is granted the plaintiff to file counter-affidavits, and to defendants to file affidavits and responses thereto, and both parties are allowed to file briefs in this case.

SATURDAY, *Sept.* 2, 1899.

(Caption omitted.)

The motions to dissolve the injunction, to restrain the relator from prosecuting this suit in Sebastian circuit court for the Greenwood district, and to remand this suit to the State court having been heretofore, to wit, on the 9th day of Aug., 1899, submitted to the court upon the pleadings, affidavits, and oral testimony taken before the court, and the court having heard then the argument of counsel, took said motions under advisement; and now, being well and sufficiently advised in the premises, it is ordered, considered, and adjudged by the court that the plaintiff's motion to remand this case to the State court, whence removed, be, and the same is hereby, overruled; to which ruling the plaintiff at the time excepted. It is further ordered, considered, and adjudged by the court that the preliminary injunction herein granted in this case by the judge of the 12th judicial circuit of the State of Arkansas on the 23 day of April, 1899, be, and the same is hereby, dissolved, set aside, and held for naught; to which ruling the plaintiff at the time excepted.

It is further ordered, considered, and adjudged by the court that the motion of the defendants to restrain the plaintiff from prosecuting this suit in the Sebastian circuit court for the Greenwood district be, and the same is hereby, overruled, without any prejudice to defendants to renew said motion at any time that the plaintiff attempts

to take any steps therein contrary to the rulings of the court herein in holding that this court had properly acquired jurisdiction of the case by removal from said court.

158 THURSDAY, *Sept.* 14, 1899.

(Caption omitted.)

Comes plaintiff, by B. T. Du Val, and in open court files replication herein.

January Term.

FRIDAY, *Jan.* 19, 1900.

(Caption omitted.)

Comes counsel and files stipulation herein.

THURSDAY, *Feb.* 1, 1900.

(Caption omitted.)

On this 1st day of February, 1900, comes on this cause to be heard upon the bill, answer, replication, and the evidence, and the respective counsel file stipulation designating the evidence upon which the cause is heard.

The court, after hearing and considering the evidence adduced and identified in said stipulation of counsel, doth find:

1st. That the bill of the plaintiff lacks equity and does not state a cause of action.

To which finding plaintiff at the time excepted.

2nd. That the evidence does not sustain the allegations of the bill.

To which finding the plaintiff at the time excepted.

It is therefore considered, ordered, adjudged, and decreed by the court that the bill of the plaintiff, State of Arkansas at the relation of Jo. Johnson, prosecuting attorney, *vs.* Kansas & Texas Coal Co. and St. Louis & San Francisco Railroad Company be, and the same is hereby, dismissed.

To which judgment of the court the plaintiff at the time excepted.

159 TUESDAY, *Feb.* 20, 1900.

(Caption omitted.)

Comes the plaintiff, by B. T. Du Val, Esqr., and files petition for appeal and assignment of errors herein; whereupon said prayer for appeal is by the court granted.

160 The United States of America to the Kansas & Texas Coal Company and the Saint Louis and San Francisco Railroad Company, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, D. C., 30 days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the Fort Smith division, western district of Arkansas, wherein The State of Arkansas is plaintiff and appellant on appeal and you are defendants on appeal, to show cause, if any there be, why the judgment rendered against the said plaintiff and appellant, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 2nd day of April, in the year of our Lord one thousand nine hundred.

[The Seal of the Circuit Court, Western District of Ark., U. S. A.]

JOHN H. ROGERS,
United States Dis'ct Judge for the Western District of Arkansas.

Attest: THOMAS BOLES, *Clerk.*

FORT SMITH, ARKANSAS, *April* 4, 1900.

We accept service of the within citation this 4th day Apr'l, 1900.

THE KANSAS & TEXAS COAL CO.,
By HILL & BRIZZOLARA, *Att'ys of Rec.*
THE ST. LOUIS & SAN FRANCISCO RAILROAD CO.,
By B. R. DAVIDSON,
Per JOS. M. HILL.

[Endorsed:] No. 121. United States circuit court, western district of Arkansas. The State of Arkansas *vs.* Kansas & Texas Coal Co. *et al.* Citation. Filed April 4th, 1900. Thomas Boles, clerk.

161 UNITED STATES OF AMERICA, }
Western District of Arkansas, Fort Smith Division. }

I, Thomas Boles, clerk of the circuit court of the United States for the Fort Smith division of the western district of Arkansas, in the eighth circuit, hereby certify that the foregoing transcript annexed to this certificate is a true and complete copy of the pleadings, testimony, and proceedings had in the case of The State of Arkansas against The Kansas & Texas Coal Company *et al.*, the original of which remains of record in my office.

The Seal of the Circuit Court, Western District of Ark., U. S. A.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Fort Smith, in said district, this 2nd day of April, 1900.

THOMAS BOLES, *Clerk.*

[Ten cent U. S. internal-revenue stamp, canceled 4, 2, 1900. T. B.]

Clerk's Fees.

Fees in court	$8.15
Manuscript	58.10
	$66.25

Paid by plaintiff.

Endorsed on cover: File No., 17,722. W. Arkansas C. C. U. S. Term No., 252. The State of Arkansas, appellant, *vs.* The Kansas and Texas Coal Company and The St. Louis and San Francisco Railroad Company. Filed April 16th, 1900.